

ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE DECISION

F&Y PROPERTIES, LLC, : In re: 931 Woodward Avenue
: Apartment ½
Appellant, : McKees Rocks, PA 15136
: :
v. : Docket no. ACHD-21-036
: :
ALLEGHENY COUNTY HEALTH : Copies Sent To:
DEPARTMENT, : *Counsel for F&Y Properties, LLC:*
: Andrew M. Gross, Esq.
Appellee. : GROSS & PATTERSON, LLC
: 707 Grant Street, Suite 2340
: Pittsburgh, PA 15219
: :
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: Pittsburgh, PA 15201

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

I. INTRODUCTION

This case is about whether a landlord's delay in making repairs to an apartment is excusable because of a tenant's actions. The Allegheny County Health Department ("ACHD") assessed a civil penalty of \$2,500 against F&Y Properties ("F&Y" or "Appellant") for alleged failure to make repairs to the property at 931 Woodward Avenue, Apartment 1/2 in McKees Rocks (the "Property"). The ACHD notified F&Y of twelve housing code violations at the Property, including a carbon monoxide hazard, an inoperable toilet, damaged concrete steps, and openings allowing for the entry of rodents.

The ACHD contends that the dangers that the violations posed to tenant Martajah Reed (“Ms. Reed”) and her family, as well as the undisputed fact that the repairs were not completed in time, justify the \$2,500 civil penalty. F&Y responds that its untimeliness was caused by Ms. Reed’s refusal to allow F&Y’s carpenter to make repairs, as well as the ACHD sending correspondence to the wrong address.

After reviewing the briefs submitted by the parties, as well as the exhibits and relevant law, this tribunal holds that although F&Y failed to complete the repairs in a timely manner, the delay was at least somewhat excusable. Logistical issues concerning communications between F&Y and the ACHD, as well as communications between F&Y and Ms. Reed postponed the repairs, which F&Y eventually made once it could access the Property. Therefore, the amount of the civil penalty is reduced from \$2,500 to \$1,250.

II. EVIDENCE

F&Y submitted the following exhibits, which were entered into evidence:

- A1: Notice of Termination
- A2: Returned Mail
- A3: Court Notice
- Supplemental Ex. 1: Text Messages from Ms. Reed
- Supplemental Ex. 2: Emails from Ms. Reed

The ACHD submitted the following exhibits, which were entered into evidence:

- D1: Service Request Form
- D2: Letter to Ms. Reed
- D3: Letter dated June 14, 2021
- D4: Letter to F&Y, dated April 29, 2021
- D5: Gain-Entry Letter
- D6: Penalty Assessment Letter, dated June 14, 2021
- D7: Letter dated July 21, 2021
- D8: Memo dated June 14, 2021

III. FINDINGS OF FACT

The following facts are established:

1. On April 26, 2021, Martajah Reed (“Ms. Reed”), a tenant at 931 Woodward Avenue, Apartment ½, McKees Rocks, PA 15136 (the “Property”), filed a complaint with the Allegheny County Health Department (“ACHD”) concerning various problems with her apartment. (Hearing Transcript (“H.T.”) at 13).
2. Ms. Reed lived at the Property with her two children, aged one and nine. (H.T. at 10).
3. On April 28, 2021, ACHD Housing Inspector D. Anthony Luria (“Mr. Luria”) and Housing Operations Manager Jamie Sokol (“Ms. Sokol”) conducted an inspection of the Property. (Ex. D1; H.T. at 44-45). Mr. Luria noted twelve violations of the ACHD’s housing code, Article VI, Housing and Community Environment. (Ex. D4).
4. On April 29, 2021, the ACHD sent a letter to F&Y Properties (“F&Y”), the landlord of the Property, itemizing the twelve housing code violations. (Ex. D4). These violations included, among others, openings in walls permitting rodent or animal entry, a detached water heater flue pipe, missing water heater drip tube, inoperable and unused secondary toilet, and damaged concrete steps in front of the Property. (*Id.*).
5. The April 29, 2021 letter was accidentally sent to the wrong address, and was sent back to the ACHD as undeliverable. (Ex. D4). F&Y principal Kirill Faerovitch (“Mr. Faerovitch”) confirmed that he received the letter (with the corrected address) sometime in late May, 2021. (*F&Y Brief* at 3).
6. On June 11, 2021, the ACHD reinspected the Property, and found all but three of the violations still remained. (Exs. D3, D4). Ms. Reed allowed the ACHD entry to the property without incident. (*Id.*).
7. Mr. Faerovitch claimed that Ms. Reed refused to wait for a carpenter to make the necessary repairs to the Property. (H.T. at 80-83; Supplemental Ex. 1).

8. On June 14, 2021, in response to Mr. Faerovitch's claim that Ms. Reed was not allowing entry into the Property, Chris Zeiler ("Mr. Zeiler") an environmental health supervisor for the ACHD, sent Ms. Reed a gain-entry letter. (Exs. D5, D8). This letter effectively demanded that a tenant make their dwelling accessible to a landlord so that repairs can be completed.
9. Also on June 14, 2021, the ACHD sent F&Y another letter stating that if repairs were not completed by July 19, 2021, a civil penalty would be assessed against F&Y. (Ex. D6; H.T. at 56).
10. On July 15, 2021, Mr. Faerovitch emailed Ms. Reed, saying that David McGaffin ("Mr. McGaffin"), a carpenter, would come to the Property on July 17th to make the necessary repairs. (Supplemental Ex. 2). Ms. Reed responded and confirmed she would be there on that date. (*Id.*).
11. On July 17, 2021, Mr. McGaffin arrived at the Property around 7:55am and knocked on the door. (H.T. at 27, 79). Ms. Reed testified that she did not hear the doorbell ring. (H.T. at 34). Mr. McGaffin testified that he heard someone inside, but no one answered the door. (*Id.*). He left five minutes later. (*Id.*).
12. At 8:15 am on July 17, 2021, Ms. Reed emailed Mr. Faerovitch, informing him that she needed to leave for work at 8:40 am and that no one had arrived yet. (Supplemental Ex. 2).
13. On July 21, 2021, the ACHD sent F&Y a letter assessing a \$2,500 civil penalty for failure to make the repairs to the Property in a timely manner. (Ex. D7).
14. On August 17, 2021, F&Y filed an appeal, stating that Ms. Reed "will not allow [F&Y] access to the unit to make required repairs." (*F&Y Notice of Appeal*).
15. On August 25, 2021, Mr. McGaffin spent nine hours at the Property making the necessary repairs. (H.T. at 80).
16. On January 12, 2022, an administrative hearing was held in this matter.

IV. DISCUSSION

A. Burden of Proof

A threshold issue here is whether F&Y or the ACHD bears the burden of proof. The ACHD argues that F&Y should bear the burden of proof because it is raising “the affirmative defense that Ms. Reed refused entry and obstructed Appellant’s purported efforts to make the repairs required by the order in question.” (*ACHD Brief* at 6). The ACHD reasons that F&Y’s argument about Ms. Reed obstructing their efforts at making repairs raises “new facts and arguments,” it should be treated as an affirmative defense, thus placing the burden of proof on F&Y. (*Id.*) (citing *V.W. v. Dept. of Pub. Welfare*, 51 A.3d 282, 285 (Pa. Cmwlth. Ct. 2012) (citations omitted)).

F&Y responds that the plain text of Article XI of the ACHD Rules and Regulations places the burden of proof on the ACHD when the ACHD assesses a civil penalty, and that it is undisputed that the ACHD assessed a civil penalty here. (*F&Y Brief* at 2) (citing ACHD Art. XI § 1105(C)(7)(a)(1)).

This tribunal holds that F&Y has the better argument here. The plain language of Article XI § 1105(C)(7)(a) states that the ACHD bears the burden of proof “when it assesses a civil penalty.” Because the ACHD has assessed a civil penalty here against F&Y, the ACHD bears the burden of proving by a preponderance of the evidence that the \$2,500 civil penalty was justified.

B. Ms. Reed's Alleged Obstruction of F&Y's Efforts to Make Repairs

The crux of F&Y's argument is that Ms. Reed's actions obstructed their carpenter's ability to make repairs to the Property. F&Y emphasizes the testimony of Mr. McGaffin, who said that no one answered the door when he visited the Property on July 17, 2021 to make repairs. (H.T. at 79). Mr. McGaffin testified:

“I showed up at about 5 minutes to 8:00, I knocked on the door, and there were several dogs jumping on the door and barking. I could hear someone inside, but they didn't answer the door. I stayed there about five minutes knocking on the door and then took a picture of the door and sent it to [Mr. Faerovitch] and left for the day.” (*Id.*).

F&Y also points to emails from Ms. Reed indicating that she knew Mr. McGaffin was coming on July 17, 2021 was inside the house during the entire time he was knocking at the door.” (*F&Y Brief* at 5; Supplemental Ex. 2). Ms. Reed confirmed that she checked her camera and saw Mr. McGaffin standing outside the Property. (*Id.*).

The ACHD makes several points in response. First, the ACHD points out that F&Y only made one attempt to have someone make repairs before the penalty was assessed. (*ACHD Brief* at 7). At this attempt, on July 17, 2021, Mr. McGaffin came to the Property and knocked on the door but received no response. After five minutes, he left. The ACHD concludes, “Seeing as how the repairs made on August 25th only took [Mr. McGaffin] nine hours, the repairperson could have presumably waited a little longer than five minutes for entry.” (*Id.*).

Second, the ACHD contends that Ms. Reed was fully cooperative with Appellants, and that on the day the repairs were made, August 25, 2021, Ms. Reed kept Mr. Faerovitch apprised of the situation by email. (*Id.*; Supplemental Ex. 2).

Finally, the ACHD highlights the danger that the violations posed to Ms. Reed and her children, especially the carbon monoxide hazard from the improperly sealed gas flue, as well as the uncapped secondary toilet. (*ACHD Brief* at 7; H.T. at 50). These dangers, the ACHD argues, justify the \$2,500 civil penalty.

Both sides have valid points here. F&Y is correct that Ms. Reed was in the house on July 17, 2021, knew that Mr. McGaffin was there to make repairs, and did not let him in. This underscores F&Y's argument.

However, the severity of the violations, coupled with the fact that F&Y, undisputedly, did not make the repairs until about a month after the ACHD's deadline buttresses the ACHD's position. Based on the facts of the case, this tribunal believes it fair to reduce the civil penalty to \$1,250.

C. Correspondence Sent to the Wrong Address

Additionally, F&Y asserts that delays in making repairs to the Property were in part due to the ACHD sending correspondence to the wrong address. In their brief, F&Y points to the April 29, 2021 letter that the ACHD sent to F&Y at the incorrect address of 676 Oxford Boulevard in Pittsburgh. (*F&Y Brief* at 3; Ex. D4). F&Y explains, "We know that it was the incorrect address because the letter was returned and a copy of the return envelope [...] is stamped return to sender by the

United States Post Office and the words Wrong Address are hand written on the envelope.” (*F&Y Brief* at 3).

F&Y also points to the testimony of Mr. Zeiler, in which he testified that he sent the April 29 letter to the correct address on May 20, 2021. (H.T. at 71). Mr. Faerovitch acknowledged that he received this letter in late May. (H.T. at 83).

This tribunal acknowledges the approximately three-week delay in correspondence in determining the appropriateness of the civil penalty here.

V. CONCLUSION

Based on the evidence and testimony presented at the hearing, as well as the parties’ briefs and the relevant law, this tribunal upholds the imposition of a civil penalty against F&Y, but reduces that penalty to \$1,250. This decision may be appealed to the Court of Common Pleas of Allegheny County, Pennsylvania.



Max Slater
Administrative Hearing Officer
Allegheny County Health Department

March 31, 2022
Dated: