

ALLEGHENY COUNTY HEALTH DEPARTMENT
HEARING OFFICER

MARVIN TALIAFERRO, : In re: 1023 Franklin
: :
Appellant : Docket No.: ACHD 22-054
: :
v. : :
: :
ALLEGHENY COUNTY HEALTH : :
DEPARTMENT, : :
: :
Appellee. : :

APPELLEE'S MOTION FOR RECONSIDERATION

NOW COMES, the Allegheny County Health Department (hereinafter "ACHD" or the "Department"), by and through its undersigned counsel, and hereby moves this tribunal, through this Motion for Reconsideration of Hearing Officer's May 31, 2023 Decision and Order. In support thereof, the Department submits the following:

1. The Pennsylvania Judicial Code allows courts to "modify or rescind any order within 30 days after its entry, notwithstanding the prior termination of any term of court, if no appeal from such order has been taken or allowed." 42 Pa.C.S.A. § 5505.

2. As of the filing of this Motion, neither party has filed an appeal of the Hearing Officer's order.

I. The Landlord removed property as permitted under the Landlord and Tenant Act.

3. The tribunal cites to Section 250.505a of the Landlord and Tenant Act which prohibits a landlord from removing personal property if the premises remains inhabited or "conditions under which personal property may be deemed abandoned no longer exist" 68 Pa.S.A. § 250.505a(f). *See* Memorandum Opinion Regarding Appellant's Notice of Appeal ("Memorandum Opinion") Pg. 6.

4. However, the Landlord and Tenant Act also allows for the landlord to remove property if one of the following set of circumstances exists.

(1) The tenant has vacated the unit following the termination of a written lease.

(2) An eviction order or order for possession in favor of the landlord has been entered and the tenant has vacated the unit and removed substantially all personal property.

(3) An eviction order or order for possession in favor of the landlord has been executed.

(4) The tenant has provided the landlord with written notice of a forwarding address and has vacated the unit and removed substantially all personal property.

(5) The tenant has vacated the unit without communicating an intent to return, the rent is more than fifteen days past due and, subsequent to those events, the landlord has posted notice of the tenant's rights regarding the property.

68 Pa. Stat. Ann. § 250.505a(b)

5. Appellant testified and produced evidence that he provided notice to terminate the lease on April 30, 2022. *See* Lease Termination Letter Dated April 30, 2022. H.T. 59:1-

6. Appellant was under the impression that the tenant had vacated the unit following the termination of the written lease, so much so that Appellant had hired contractors to remove trash on May 5, 2022. H.T. 61:20-25.

7. Appellant testified to boarding up the property as it had been vacated by the tenant. H.T 61:16-17.

8. Throughout the entire enforcement process, Appellant was proceeding through the legal process to make ensure the tenant would not trespass on the property. H.T. 61:13-20.

9. Appellant testified that he was already working on removing the trash when the Department levied the civil penalty on July 18, 2022. H.T. 61:20-25.

II. The Local Health Administration Law gives the Department the authority to abate public health nuisances.

10. The General Assembly grants local health departments the authority to “make and enforce such rules and regulations... necessary for the promotion and preservation of the public health,” under the Local Health Administrative Law (“LHAL”). 16 P.S. § 12010(f).

11. Article VI of the ACHD Rules and Regulations is promulgated under the authority of the LHAL. *Id.*

12. However, this tribunal states that “disposing or exercising control over any of the items that were causing violations of Art. VI §§ 650.D, 650.F and 651.D. as doing so would conflict with the requirements of the Landlord and Tenant Act.” Memorandum Opinion Pg. 7.

13. The tribunal further notes in a footnote that “the Landlord and Tenant Act says nothing about the value of a tenant’s material left at a rental property. It is therefore of no matter that Mr. Goldsmith’s personal proper[t]y in this instance was garbage.” Memorandum Opinion Pg. 7 FN 1.

14. However, the LHAL explicitly states that local health departments “shall prevent or remove conditions which constitute a menace to public health.” 16 P.S. § 12010, § 12010(c).

15. The Department performed six inspections from September 27, 2021, and August 24, 2022, nonetheless each inspection can only capture what the inspector witnesses at the time of the inspection. *See* Hearing Exhibits A, C, F, H, J and K.

16. At the time of the inspections, the inspectors observed several violations under Art. VI that constituted a risk for the public's health. *Id.*

17. After the October 12, 2021, inspection, the Department had no reason to believe that the tenant was still residing on the property due to the lack of utilities and made a determination the property was vacant. *See* Hearing Exhibit M.

18. The Department had a duty under the LHAL to abate the public health nuisance that remained on the then vacant property.

19. The Department appreciates and accepts this tribunal's factual finding and does not contest the order to recalculate the civil penalty. However, the decision creates precedent that is particularly problematic with respect to the Department's obligation to eliminate menaces to the public health.

20. Here, we have a situation where no action was taken with respect to a public health hazard. The putative tenant was no longer present when the Department issued the Penalty Assessment Warning Letter, and the subsequent penalty.

21. The Department initially sent a Notice of Violation to the tenant on October 12, 2021; however, the violations remained, and the Department made a determination based on evidence at the subsequent inspections that the property was vacant. H.T. 21:21-21; 24:7-8. *See also* Hearing Exhibits F, H, and J.

22. Therefore, without an available tenant, the landlord/owner was the sole party to which these violations could be addressed.

23. The Department agrees with the tribunal that were the tenant discoverable with some due diligence, the violations and agency action would have focused on the tenant. Such diligence bore no results.

24. Therefore, the Department, in the exercise of its lawful obligation under the LHAL is left with no recourse under the tribunal's analysis.

25. Under this decision and ruling, the Department must wait and see if there is a potential tenant that *may* return before proceeding with an enforcement action against a property owner for community environment violations under Art. VI. This, of course, would require the Department to allow a nuisance to fester in dilapidation because tenancy is not immediately apparent.

26. The Department is grateful for the tribunal's decision, and is copacetic with implementing its decision concerning a recalculation of the penalty as ordered but its rationale presents a grave danger in suggesting the Landlord Tenant Law trumps the Local Health Administration Law. Such conflict should be avoided at great pains. Notably, our Supreme Court has articulated the following:

When the words of a statute are not explicit, our determination of legislative intent may be informed by other factors, including administrative interpretations of the statute, the consequences of a particular interpretation, and analysis of other statutes addressing the same or similar subjects. *Colville v. Allegheny County Retirement Board*, 592 Pa. 433, 926 A.2d 424, 432 (2007) (citing 1 Pa.C.S. § 1921(c)). We emphasize that while “an interpretation of a statute by those charged with its administration and enforcement is entitled to deference, such consideration most appropriately pertains to circumstances in which the provision is not explicit or is ambiguous.” *Tritt, supra* at 905 (internal citation omitted).

If possible, we avoid a reading that would lead to a conflict between different statutes or between individual parts of a statute. *Housing Authority of the County of Chester, supra* at 946. Finally, we presume that when enacting any statute, the

General Assembly intended to favor the public interest as against any private interest. 1 Pa.C.S. § 1922(5); *Vitac Corporation v. Workers' Compensation Appeal Board (Rozanc)*, 578 Pa. 574, 854 A.2d 481, 485 (2004).

Ins. Fed'n of Pennsylvania, Inc. v. Com., Ins. Dep't, 970 A.2d 1108, 1114 (2009).

CONCLUSION

For all of the aforementioned reasons, the Department respectfully requests that this tribunal reconsider and amend its May 31, 2023 Decision and Order to opine that the Department may rely on the circumstances as found at the time of inspection to ascertain responsibility for violations to County regulations. .

Date: June 14, 2023

By: 

Elizabeth Rubenstein
PA ID: 323254
ACHD Assistant Solicitor

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Reconsider was served upon the following by electronic mail, on this 15 June 2023 :

Administrative Hearing Officer Allegheny
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Date: June 15, 2023



Elizabeth Rubenstein
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ACHD Assistant Solicitor

ORDER

AND NOW, this ____ day of _____ 2023 upon consideration of Appellee's Motion for Reconsideration, and upon consideration of the legal arguments presented, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

Appellee's Motion for Reconsideration is hereby GRANTED and the penalty levied against Appellant is reinstated in full.

John McGowan, Esq
Administrative Hearing Officer
Allegheny County Health Department