

**BEFORE THE HEARING OFFICER
ALLEGHENY COUNTY HEALTH DEPARTMENT**

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

MEMORANDUM OPINION REGARDING APPELLANT’S NOTICE OF APPEAL

This matter concerns the appeal of an administrative fine that was levied by Appellee Allegheny County Health Department (“ACHD”) against Appellant Marvin Taliaferro concerning various violations of ACHD Rules and Regulations Article VI – Houses and Community Environment (“Art. VI”) at 1023 Franklin Street, Pittsburgh, Pennsylvania 15221 (the “property”).

Procedural History

ACHD issued a penalty in the amount of \$1,687.50 against Appellant on July 18, 2022, for violations of Art. VI §§ 622, 624, 650.D, 650.F.3, and 651.D. *See* ACHD Ex. L. Appellant timely filed a Notice of Appeal to this Tribunal pursuant to ACHD Article XI – Hearings and Appeals on July 28, 2022. A Hearing was held before the undersigned Hearing Officer on February 23, 2023. ACHD submitted a Post-Hearing Brief to the undersigned Hearing Officer on April 27, 2023. Appellant did not file a post-hearing brief for consideration. The matter is now ripe for disposition by this Tribunal.

Factual Background

Appellant is a co-owner of the property and, beginning in May 2020, rented it to Mr. Kenneth Goldsmith. *See* H.T. at 65: 4-7; *see also* Appellant's Ex. 2. It is undisputed that Mr. Goldsmith has significant mental health difficulties, including having a hoarding disorder. *See* H.T. at 53: 18-21. Appellant leased the property to Mr. Goldsmith through a social work organization called Chartiers Center for a term of one year from May 1, 2020, to May 31, 2021. *See* H.T. at 60: 22- 61: 4; *see also* Appellant's Ex. 2. A representative of Chartiers Center initially assisted Mr. Goldsmith in maintaining the property during the first several months of his lease; however, beginning in early 2021, the representative stopped showing up at the property. *See* H.T. at 67: 4-11. At that point, large quantities of garbage began accumulating on the property. *See id.* There is no dispute amongst the parties that Mr. Goldsmith was responsible for bringing the garbage onto the property. *See* 53: 23-25. Appellant attempted to cooperate with Chartiers Center during the middle part of 2021 while they sought new housing for Mr. Goldsmith and did not seek immediate eviction when the lease ended at the end of May 2021. *See* H.T. at 69: 11-19. Appellant was unable to start formal eviction proceedings in Landlord/Tenant court against Mr. Goldsmith until April 2022 due to COVID-19. *See* H.T. at 71: 14- 72: 14. Appellant received a final order for Mr. Goldsmith to vacate the property in July 2022, at which point the property was boarded up, and Mr. Goldsmith did not return. *See* H.T. at 73:6-16.

ACHD performed an initial inspection of the property on September 27, 2021, and found that “[t]he entire back yard was filled with garbage, and the garbage spilled out into the vacant lot to the right of the building. Food waste was on the ground attracting rodents. Piles of debris, weeds, big containers holding rainwater. Mosquitos were breeding in the containers of water.”

H.T. at 12: 7-13. ACHD sent an initial Notice of Violation (“NOV”) to Appellant on September 30, 2021, informing him that the conditions at the property were in violation of Art. VI and of the need to take corrective measures. *See* H.T. at 13: 19-24; *see also* ACHD Ex. B. The property was in a similar state at a follow-up inspection performed by ACHD on October 12, 2021. *See* H.T. at 15: 23-25; *see also* ACHD Ex. C. On that occasion, Mr. Goldsmith was found at the property, and ACHD sent an NOV to him on November 23, 2021, informing him of the existence of the violations and the need for him to take corrective actions. *See* H.T. at 18: 7-17; *see also* ACHD Ex. E. Mr. Christopher Zeiler, an Environmental Health Supervisor for ACHD, visited the property sometime in February 2022. Mr. Zeiler observed that:

There [were] enormous piles of trash and debris on the property, so much so I haven’t seen that amount of material in a long time . . . with the Department . . . It was very cold [there] and the back window of the property was wide open. You could see into the rear first floor, and it was just full of material, household items, trash, refuse, and it appeared to us that no utilities were on.

H.T. at 50: 9-19. ACHD was also under the impression that Mr. Goldsmith was, at the time of the February 2022 inspection, living in the Squirrel Hill neighborhood of Pittsburgh. *See* H.T. at 36: 12-23. Based on this information and belief, ACHD “made a determination that the property was vacant.” H.T. at 50: 19-20. ACHD then concluded that responsibility for correcting the existence of the violations had reverted to Appellant based on Mr. Goldsmith vacating the property. *See* H.T. at 51: 12-19. ACHD sent an additional NOV to Appellant on February 24, 2022, informing him that he was responsible for correcting the violations at the property. *See* H.T. at 21: 15-24. ACHD conducted another inspection of the property on April 26, 2022, and found that the property appeared to be vacant and that the conditions at the property remained the same with the addition of a broken window in the basement and missing bricks above the window. *See* H.T. at 23: 11- 24: 8; *see also* ACHD Ex. H. Following that inspection, ACHD

sent a Penalty Assessment Warning (“PAW”) to Appellant on May 5, 2022, informing him of the need to abate the cited violations by June 9, 2022, or face an administrative penalty. *See* H.T. at 25: 13-14; *see also* ACHD Ex. I. ACHD inspected the property again on June 24, 2022, and found that the conditions giving rise to the PAW remained the same. *See* H.T. at 26: 11-19; *see also* ACHD Ex. J. ACHD then issued the administrative penalty to Appellant on July 18, 2022, for violations of Art. VI and failure to comply with the PAW. *See* ACHD Ex. L.

Despite ACHD’s claim that Mr. Goldsmith had vacated the property by the February 2022 inspection, we find that Mr. Goldsmith remained a tenant of the property until sometime around July 2022, at which point he was formally evicted by Appellant. First, we note that witnesses for ACHD were unsure about information surrounding the case, such as the year in which inspections were conducted. *See* H.T. at 31: 21- 33: 5. Additionally, information that formed ACHD’s belief about the vacancy status of the property was based on hearsay evidence from sources that witnesses were unable to specifically identify. *See* H.T. at 39: 18-23. Further, a witness for ACHD stated that “[Mr. Goldsmith] moved to . . . Squirrel Hill and later came back [to the property],” H.T. 29: 18-19, contradicting their assertion that Mr. Goldsmith had permanently vacated the property. A witness for ACHD also confirmed that he saw Mr. Goldsmith at the property sometime in the spring of 2022. *See* H.T. at 53: 2-7. All this information comports with the testimony provided by Appellant who stated that Mr. Goldsmith had temporarily moved in with his girlfriend in Squirrel Hill but did not abandon the property. *See* H.T. at 56: 23-25. Appellant also testified that Mr. Goldsmith, due to his mental health issues, was oftentimes difficult to locate and had been 302’d on multiple occasions. *See* H.T. at 70: 2-9. Based on this information, we find that Appellant had greater knowledge of the situation, and the facts that he described during his testimony better comport with the timeline

than what was presented by ACHD. We therefore conclude that Mr. Goldsmith had not vacated the property until July 2022.

Discussion

ACHD assessed administrative penalties against Appellant for violations of the following provisions of Art. VI:

§ 622 Every exterior wall, roof and foundation shall be weathertight and watertight. Every floor, wall and ceiling shall be sound and tight. All members of the structure shall be kept in good repair and in safe condition.

§ 624 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.

§ 650.D No person shall maintain or permit to be maintained any artificial receptacle or pool, including but not limited to scrap tires or appliances, containing water in such condition that breeding of pest vectors therein may become a danger to the public health or create a nuisance.

§ 650.F.3 Any food source utilized by a pest vector shall be eliminated by the owner of the property or other responsible party when so ordered by the Director.

§ 651.D No person shall maintain a building or premises, occupied or not, whereby its deterioration, unsealed openings or other characteristics create a pest vector attraction, nuisance or safety hazard.

1. It shall be the responsibility of the owner of a vacant structure to maintain the structure in a condition where all openings are sealed to prevent the entry and attraction of pest vectors and to prevent a nuisance or safety hazard.
2. It shall be the responsibility of the owner of a vacant premise or lot to maintain the property in a condition to prevent the entry, attraction or breeding of pest vectors and to prevent a nuisance or safety hazard.

Additionally, § 621 provides that “[t]he responsibility for compliance with the applicable requirements of Sections 622 through 625 shall be upon the owner.”

I. ACHD acted properly in issuing administrative penalties pursuant to Art. VI §§ 622 and 624.

Pursuant to Art. XI § 1105.C.8, the “Hearing Officer shall hear and admit only such testimony and evidence as is relevant to the matters and issues set forth in the Notice of Appeal. In this instance, Appellant only challenged the issuance of administrative penalties pursuant to Art. VI §§ 650.D, 650.F.3 and 651.D in relationship to the garbage that Mr. Goldsmith accumulated on the property and did not address the broken window in the basement or the damaged walls that gave rise to the penalties associated with Art. VI §§ 622 and 624. Additionally, ACHD provided uncontroverted testimony during its presentation showing the existence of these violations. *See* H.T. at 24: 2-5. We therefore conclude that ACHD acted properly in assessing administrative penalties pursuant to Art. VI §§ 622 and 624.

II. ACHD acted improperly in issuing administrative penalties pursuant to Art. VI §§ 650.D, 650.F.3 and 651.D.

We note that the Landlord and Tenant Act of 1951 provides that:

Under no circumstances may a landlord dispose of or otherwise exercise control over personal property remaining upon inhabited premises without the express permission of the tenant. If the conditions under which personal property may be deemed abandoned no longer exist, the landlord shall have no right to dispose of or otherwise exercise control over the property.

68 P.S. § 250.505a(f). Further, “our Supreme Court held that local municipalities may enact, pursuant to their police powers, laws affecting the landlord/tenant relationship, as long as those local laws do not directly conflict with the Landlord Tenant Act.” *Berwick Area Landlord Ass'n v. Borough of Berwick*, 48 A.3d 524, 534–35 (Pa. Commw. Ct. 2012) (citing *Warren v. City of Philadelphia*, 382 Pa. 380, 385–86, 115 A.2d 218, 221 (1955)).


As we found above, Mr. Goldsmith continued to inhabit the property until July 2022. Therefore, regardless of what Art. VI may require, Appellant was prohibited from disposing of

or exercising control over any of the items that were causing violations of Art. VI §§ 650.D, 650.F.3 and 651.D,¹ as doing so would conflict with the requirements of the Landlord and Tenant Act.

Additionally, as indicated by testimony from ACHD, Appellant's responsibility for abating the violations was based on the incorrect belief that Mr. Goldsmith had vacated the property by February 2022. *See* H.T. at 51: 12-19. The provisions of Art. VI §§ 650.D, 650.F.3 and 651.D also indicate that it is the responsibility of the occupant of a property to comply with the regulation (such an interpretation also keeps Art. VI in accord with the Landlord and Tenant Act). Art. VI § 650.D specifically states that “[n]o person shall maintain or permit to be maintained”; § 650.F.3 concerns “the owner of the property or other responsible party”; and 651.D.1 addresses “the owner of a vacant structure.” We therefore conclude that the cited provisions of Art. VI place the responsibility for maintaining a structure on the occupant if it is occupied and on the owner if it is vacant. As we have found that the property was occupied at the time that the administrative penalty was issued, ACHD acted incorrectly when issuing the penalty pursuant to Art. VI §§ 650.D, 650.F.3 and 651. D.

Conclusion

Contrary to ACHD's claim, we find that the property remained occupied by Mr. Goldsmith until July 2022. It was therefore not Appellant's responsibility to ensure compliance with Art. VI §§ 650.D, 650.F.3 and 651. D.

/s/ 
John P. McGowan, Esquire
Hearing Officer
Allegheny County Health Department

¹ 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 property in this instance was garbage.

