

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

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

**ORDER AND OPINION REGARDING APPELLEE’S MOTION FOR
RECONSIDERATION**

This concerns the Motion for Reconsideration filed by Appellee Allegheny County Health Department (“ACHD”) on June 15, 2023, following the issuance of the Order Remanding Matter to Housing and Community Environment by this Tribunal on May 31, 2023. In that Order and corresponding Memorandum Opinion, we found that ACHD had acted improperly when it issued an administrative penalty against Appellant Marvin Taliaferro for alleged violations of ACHD Rules and Regulations – Article VI (“Art. VI”) §§ 650.D, 650.F.3, and 651.D.¹ ACHD seeks reconsideration of the Order on the basis that Appellant removed property as permitted under the Landlord and Tenant Act and that Local Health Administration Law gives ACHD the authority to abate public health nuisances. For the reasons stated hereunder, we find ACHD’s arguments unconvincing and DENY their Motion for Reconsideration.

I. The timeline of events supports the finding that the property remained occupied until July 2022.

ACHD first seeks reconsideration of the Order on the basis that Appellant, in accordance with the Landlord and Tenant Act, removed items from the property. *See* ACHD Mot. for

¹ As stated in the Order, we also found that ACHD acted properly when assessing the administrative penalty against Appellant for violations of Art. VI §§ 622 and 624.

Recons. at ¶ 4-9. ACHD notes that the Landlord and Tenant Act provides for five scenarios under which a landlord may remove personal property of a tenant from a residence. *See id.* at ¶ 4; 68 Pa. Stat. Ann. § 250.505a(b). ACHD contends that Appellant’s action of removing garbage accumulated by Mr. Goldsmith at 1023 Franklin demonstrates that the residence was vacant. *See id.* However, as we noted in the Memorandum Opinion, the testimony and evidence presented during the Hearing shows that Mr. Goldsmith had not vacated the property until the final eviction order was issued in July 2022. *See Mem. Op.* at 4-5. We also found credible Appellant’s claim that he was unable to successfully evict Mr. Goldsmith from the property until July 2022, due to COVID-19, despite his desire to have Mr. Goldsmith removed from the property as early as May 2021. *See id.; see also H.T.* at 69: 1-3. Further, though Appellant did state that he removed garbage from the property prior to the entry of the final eviction order, he also noted that doing so was in contravention of the Landlord and Tenant Act and that Mr. Goldsmith called the police to stop the removal of his personal property. *See H.T.* at 66: 10-14. Lastly, as stated by Appellant during his testimony and uncontroverted by ACHD, following the entry of the eviction order by the Wilkesburg Magistrate, Mr. Goldsmith did not return to the property, and Appellant was then successfully able to abate the violation. *See id.* at 73: 10-16. The totality of this evidence confirms our previous finding that the property remained occupied by Mr. Goldsmith until July 2022. Therefore, the provisions of 68 Pa. Stat. Ann. § 250.505a(b) cited by ACHD do not apply, as each concern either tenants who have vacated a property or who have been successfully evicted.

II. ACHD’s interpretation of Article VI conflicts with the Landlord and Tenant Act.

ACHD also seeks reconsideration of the Order on the basis that the Local Health Administrative Law mandates that it “shall prevent or remove conditions which constitute a

menace to public health.” 16 P.S. § 12010(c); ACHD Mot. for Recons. at ¶ 14. ACHD cites to *Ins. Fed’n of Pennsylvania, Inc. v. Com., Ins. Dep’t* and claims that the wording of the Landlord and Tenant Act is not explicit, and therefore, this Tribunal should defer to ACHD’s administrative interpretation of Art. VI as requiring Appellant to abate the violations. *See* ACHD Mot. for Recons. at ¶ 24-26.

However, we find that *Ins. Fed’n of Pennsylvania, Inc.* and the established rules of statutory construction and administrative law support our previous ruling. Specifically, the Supreme Court of Pennsylvania in *Ins. Fed’n of Pennsylvania, Inc.* held 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.’” 601 Pa. 20, 30, 970 A.2d 1108, 1114 (2009) (citing *Tritt v. Cortes*, 578 Pa. 317, 851 A.2d 903, 905 (2004)). In the matter *sub judice*, the provisions of the Landlord and Tenant Act could not be clearer:

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) (emphasis added). While ACHD may have made efforts to determine whether the property remained occupied by Mr. Goldsmith during its investigation, we found that, based on the credible evidence presented during the Hearing, ACHD’s conclusion that he no longer occupied the property was incorrect *See* Mem. Op. at 4-5.

While we do not question that this holding may present difficulty for ACHD in its enforcement of Article VI, we cannot overrule the explicit intent of the General Assembly in its mandate that a landlord not remove the personal property of a tenant from an inhabited premises.

We also note that ACHD's interpretation of the relevant law would create a similar conundrum for landlords, who would be required to comply with orders to abate nuisances on their rented properties when they are prohibited from disposing of a tenant's personal property by the Landlord and Tenant Act.

Conclusion

For the reasons stated above and in the Memorandum Opinion dated May 31, 2023, we DENY ACHD's Motion for Reconsideration. The parties shall comply with the Order Remanding Matter to Housing and Community Environment dated May 31, 2023.

/s/ *John McGowan*

John F. McGowan, Esquire
Hearing Officer
Allegheny County Health Department