

ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE HEARING

MAURICE TYLER, : In re: Funds in Escrow Rent
: Withholding
Appellant, : Account #7893
v. : 1840 Tonapah Street
: Pittsburgh, PA 15216
: :
ALLEGHENY COUNTY HEALTH :
DEPARTMENT, :
: :
Appellee. : :

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

I. INTRODUCTION

The issue presented in this appeal is whether a tenant may recover some or all of the \$2,080 of rent payments that he paid into escrow as part of a rent-withholding program. Appellant Maurice Tyler (“Mr. Tyler”) was a tenant at 1840 Tonapah Street, Pittsburgh, PA 15216 (the “Property”). On September 30, 2016, the Allegheny County Health Department (“ACHD”) issued a Notice of Violation to the then-landlords of the Property, Michael Lee and Robert Miller (the “Former Landlords”) for numerous violations of the ACHD’s Housing Code.

One week later, the ACHD deemed the Property “Unfit for Human Habitation,” and allowed Mr. Tyler to enter into the ACHD’s Rent Withholding Program, pursuant to the Pennsylvania Rent Suspension Act of 1966 (“Rent Withholding Act”). Under this program, Mr. Tyler would pay his rent into escrow for six months, from October 2016 through April 2017. At the end of the six months, if the violations were corrected, the money in escrow would go to the Former

Landlords. If the violations were not corrected, the money would be returned to Mr. Tyler. Mr. Tyler made four rent payments into escrow under the Rent Withholding Program, totaling \$2,080.

The wrinkle in this case is that in February 2017, four months into the rent withholding period, the Former Landlords sold the Property to a company called Foundry Green. After the sale, Foundry Green made extensive repairs to the Property. It is undisputed that the Former Landlords failed to make any repairs to the Property before selling it to Foundry Green.

The question is: Can Mr. Tyler recover the money he paid into escrow during the four months of the rent withholding period that the Property was owned by the Former Landlords? Mr. Tyler argues that he should be able to recover this money because the Former Landlords failed to make any repairs while they owned the Property during the rent withholding period. The ACHD argues that the escrow payments should be disbursed proportionately to the Former Landlords and Foundry Green¹ because the rent withholding period terminated when the Property was sold.

After evaluating the evidence, the facts, and the relevant case law, I find that Mr. Tyler may not recover any of the rent payments that he paid into escrow, and that the ACHD was within its rights to apportion the funds held in escrow to the Former Landlords and Foundry Green. The pertinent case law and the language of the Rent Withholding Act compel this result.

¹ The ACHD intends to give the Former Landlords \$1,838.57 of the rent payments in escrow, collectively, and give the remaining \$241.43 to Foundry Green.

II. EVIDENCE

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

- A1: Letter
- A2: Receipt
- A3: Invoice
- A4: Contract
- A5: Cancelled Checks

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

- D1: Document dated 3/4/2017
- D2: Rental Agreement
- D3: Lease
- D4: Letter
- D5: Inspection Report
- D6: Money Orders
- D7: Letter
- D8: Letter
- D9: Letter

III. FINDINGS OF FACT

Based on my review of the evidence and having resolved all issues of credibility, I find the following facts:

- 1) On September 30, 2016, the ACHD inspected the Property (“First Inspection Report”). (Hearing Transcript (“H.T.”) at 14; Ex. D5).
- 2) On October 7, 2016, the ACHD issued a Notice of Violation to the Former Landlords, stating that the Property was “Unfit for Human Habitation,” and enclosed a copy of the First Inspection Report. (H.T. at 13-14; Exs. D4, D5).
- 3) The Housing Code violations included, among others: an inoperable toilet, defective smoke detectors, broken concrete steps, water damage to the ceiling above a bedroom, improperly installed electrical outlets, windows that were improperly sealed shut, and a hole in a wall. (Ex. D5).

- 4) The six-month rent withholding period therefore started on October 7, 2016, and would conclude on April 7, 2017.
- 5) At the end of the six-month period, if the landlord has corrected the violations, the money in escrow would be paid to the landlord. If the landlord has failed to correct the violations, the money in escrow would be returned to Mr. Tyler.
- 6) The Former Landlords were the landlords from sometime before October 7, 2016 until February 15, 2017. (H.T. at 6-7; Exs. D2, D3).
- 7) Between October 2016 and February 2017, Mr. Tyler paid his monthly rent into escrow for the purposes of the Rent Withholding Program. (H.T. at 10; Ex. D6).
- 8) On or around February 15, 2017, the Former Landlords sold the Property to Foundry Green. (H.T. at 8, 15; Ex. D3).
- 9) In April of 2017, the ACHD returned Mr. Tyler's rent check for March of 2017 to Mr. Tyler. (H.T. at 9-10; Ex. D1).
- 10) Mr. Tyler did not make a rent payment into escrow for April 2017. (H.T. at 10).
- 11) At the end of the rent withholding program, the rent escrow account contained \$2,080.
- 12) On July 18, 2017, the ACHD notified the Former Landlords, Foundry Green, and Mr. Tyler of the amount the ACHD intends to disburse to each party from the rent escrow account.
- 13) The ACHD intends to collectively disburse \$1,838.57 to the Former Landlords. (Exs. D8, D9).
- 14) The ACHD intends to disburse \$241.43 to Foundry Green. (Ex. D7).
- 15) The ACHD does not intend to disburse any amount to Mr. Tyler.
- 16) On September 20, 2017, a hearing was held to resolve this matter.

IV. DISCUSSION

In an administrative appeal of a final agency action of the ACHD:

“The burden of proceeding and the burden of proof shall be the same as at common law, in that the burden shall normally rest with the party asserting the affirmative of an issue. It shall generally be the burden of the party asserting the affirmative of the issue to establish it by a preponderance of the evidence. In cases where a party has the burden of proof to establish the party’s case by a preponderance of the evidence, the Hearing Officer may nonetheless require the other party to assume the burden of proceeding with the evidence in whole or in part if that party is in possession of facts or should have knowledge of facts relevant to the issue.” ACHD Art. XI § 1105(C)(7).

Therefore, Mr. Tyler bears the burden of proving by a preponderance of the evidence that he, rather than the Former Landlords and Foundry Green, should receive the payments that he made into escrow during the rent withholding period.

The Rent Withholding Act states in relevant part:

“[W]henever...[a] Public Health Department... certifies a dwelling as unfit for human habitation, the duty of any tenant of such dwelling to pay, and the right of the landlord to collect rent shall be suspended without affecting any other terms or conditions of the landlord tenant relationship, until the dwelling is certified as fit for human habitation or until the tenancy is terminated for any reason other than nonpayment of rent. During any period when the duty to pay rent is suspended, and the tenant continues to occupy the dwelling, the rent withheld shall be deposited by the tenant in an escrow account in a bank or trust company approved by the city or county as the case may be and shall be paid to the landlord when the dwelling is certified as fit for human habitation at any time within six months from the date on which the dwelling was certified as unfit for human habitation. If, at the end of six months after the certification of a dwelling as unfit for human habitation, such dwelling has not been 6 certified as fit for human habitation, any moneys deposited in

escrow on account of continued occupancy shall be payable to the depositor, except that any funds deposited in escrow may be used, for the purpose of making such dwelling fit for human habitation and for the payment of utility services for which the landlord is obligated but which he refuses or is unable to pay. No tenant shall be evicted for any reason whatsoever while rent is deposited in escrow.” P.L. 1534, No. 536, amended June 11, 1968, P.L. 159, No. 89.

It seems to violate the spirit of the Rent Withholding Act that a landlord who failed to make the necessary repairs may still collect rent payments paid into escrow. But the wording of the statute, coupled with the Superior Court’s holding in *Juliano*, dictates that result.

Text of the Rent Withholding Act

The Rent Withholding Act suspends a landlord’s right to collect rent “until the dwelling is certified as fit for human habitation or until the tenancy is terminated for any reason other than nonpayment of rent.” The ACHD’s core argument is that the Former Landlords, rather than Mr. Tyler, are entitled to the four months’ rent that Mr. Tyler paid into escrow during the Rent Withholding Period because the tenancy terminated within the six months for a reason other than non-payment of rent. (*ACHD Brief* at 5).

In other words, the ACHD contends that the sale of the Property from the Former Landlords to Foundry Green in February of 2017 terminated the tenancy. (*Id.*).

If this were the entirety of the Rent Withholding Act, this case would be a proverbial slam dunk for the ACHD. However, the Act continues:

“During any period when the duty to pay rent is suspended, and the tenant continues to occupy the dwelling, the rent withheld shall be deposited by the tenant in an escrow account...and shall be paid to the landlord when the dwelling is certified as fit for human habitation at any time *within six months from the date on which the dwelling was certified as unfit for human habitation.*” (emphasis added).

The text of the Rent Withholding Act thus contains two seemingly contradictory clauses. On one hand, it indicates that a landlord may collect rent paid into escrow if the tenancy is terminated for a reason other than nonpayment of rent. On the other hand, the Rent Withholding Act declares that the rent that a tenant deposited into escrow would be paid to the landlord only if the dwelling is certified as fit for human habitation within six months of when it was deemed unfit for human habitation.

Here, the tenancy between Mr. Tyler and the Former Landlords terminated when the Property was sold, and there is no indication in the current or former lease agreements or elsewhere that Foundry Green took on the Former Landlords obligations under the Rent Withholding Act. (Exs. D2, D3).

But the Property was also not certified as fit for human habitation within six months of it being deemed unfit. The Property was certified as Unfit for Human Habitation on October 7, 2016. (Ex. D4). Therefore, the end date of the six-month rent withholding period would be April 7, 2017. Mr. Tyler asserts that the violations were not fixed by April 7, 2017. (Exs. A3-A5; H.T. at 5-6). The ACHD does not dispute this claim. (*ACHD Brief* at 6). In fact, the ACHD did not deem the Property fit for human habitation until July 18, 2017. (Ex. D7).

Because the language of the Rent Withholding Act appears to command two different outcomes in this case, we must also look to case law.

Case Law

The primary case cited by the ACHD in support of its position is *Juliano v. Strong*, 448 A.2d 1379 (Pa. Super. Ct. 1982). In *Juliano*, the ACHD deemed a tenant's apartment unfit for human habitation in May of 1979, and she was allowed to pay rent into escrow during a six-month rent withholding period. 448 A.2d at 1380. In August of 1979, three months into the rent withholding period, the landlord sold the property without making the necessary repairs. *Id.* The key legal question was: Who could recover the three months' worth of rent payments that the tenant paid into escrow during the rent withholding period—the tenant or the landlord? The *Juliano* court found that the landlord could recover the money paid into escrow because the tenancy terminated when he sold the property in the middle of the rent-withholding period. *Id.* at 1382.

The *Juliano* court began by announcing the purpose of the Rent Withholding Act: “The purpose of the Act is to restore substandard housing to a reasonable level of habitability as swiftly as possible and to deter landlords from allowing their property to deteriorate into a condition unfit for habitation.” 448 A.2d at 1381-82 (citing *Pugh v. Holmes*, 405 A.2d 897, 905 (Pa. 1979)).

The court then declared that under the Rent Withholding Act, “the landlord's right to collect rent shall be suspended until the occurrence of one of two

contingencies: (1) the building is certified as fit for human habitation; or (2) the tenancy is terminated for any reason other than nonpayment of rent.” *Id.* at 1381.

Although the building in *Juliano* was not certified as fit for human habitation within six months of it being certified as unfit, the Superior Court found that the tenancy terminated when the landlord put the property up for sale, a reason unrelated to the nonpayment of rent. *Id.* at 1382. The court held that because the termination of the landlord-tenant relationship was not retaliatory, “the Rent Withholding Act no longer govern[ed] the relationship of the parties.” *Id.*

This case is very similar to *Juliano*. Like *Juliano*, the ACHD deemed a property unfit for human habitation and allowed the tenant—Mr. Tyler—to pay rent into escrow for six months. Also, as in *Juliano*, the landlords sold the Property in the middle of the rent withholding period, thus terminating the tenancy for a reason other than nonpayment of rent.²

Here, the first contingency outlined in *Juliano*—the Property being certified as fit for human habitation—did not occur until May 8, 2017, a month after the original six-month rent withholding period would have ended. But the second contingency did happen because the tenancy was terminated when the Former Landlords sold the Property to Foundry Green. As the ACHD points out in its brief, “The leases between the Former Landlords and Appellant and Foundry Green and Appellant do not indicate that obligations under the [Rent Withholding] Act were assigned. (*ACHD Brief* at 8; Exs. D2, D3). I see nothing in the leases or anywhere

² It is uncontested that Mr. Tyler paid four months of rent into escrow between October 2016 and February 2017 under the Rent Withholding Program. (H.T. at 10; Ex. D6).

else in the record indicating that the obligations under the Rent Withholding Act were assigned or transferred from the Former Landlords to Foundry Green when the sale occurred.

In his post-hearing statement, Mr. Tyler argues that it would be unfair for the Former Landlords to collect four months of rent payment when they did not make the necessary repairs: “I don’t understand how [Mike Lee, a Former Landlord] would be entitled to rent from the months of the property was found Unfit for habitation, a situation he never... [corrected].”

This argument mirrors Judge Brosky’s dissenting opinion in *Juliano*. The dissent chastises the majority for undercutting the core purpose of the Rent Withholding Act—compelling the landlord to make necessary repairs:

“The broad purpose envisioned by the Act...is that landlords are obliged to maintain habitable dwellings. The Rent Withholding Act merely provides a vehicle by which the tenant can force the commencement of the revitalization process. The landlord cannot escape this process on the chance the tenant severs the lease. He must complete the rehabilitation of the building.” 448 A.2d at 1386 (Brosky, J., dissenting).

This is a strong logical argument. If the purpose of the Rent Withholding Act is to ensure that landlords repair uninhabitable properties, then allowing the Former Landlords to collect rent without making repairs directly undermines that goal. Unfortunately for Mr. Tyler, Judge Brosky’s dissent is not controlling law. Because of the majority’s holding in *Juliano* and that case’s close factual similarity

to this one, the ACHD was within its right to apportion the four months' worth of rent to the Former Landlords and Foundry Green rather than return it to Mr. Tyler.

CONCLUSION

Based on the evidence and testimony presented at the hearing, as well as the relevant Pennsylvania case law, I find that Mr. Tyler has not met his burden of proving by a preponderance of the evidence that the funds in escrow should be paid to him rather than the Former Landlords. The ACHD's decision to give the Former Landlords \$1,838.57 of the rent payments in escrow, collectively, and give the remaining \$241.43 to Foundry Green is upheld. This administrative decision may be appealed to the Court of Common Pleas of Allegheny County, Pennsylvania.

_____/s/_____
Max Slater
Administrative Hearing Officer
Allegheny County Health Department

December 11, 2017
Dated:

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