

ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE HEARING

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|-------------------------|---|----------------------------------|
| THREE RIVERS PROPERTY, | : | In re: Funds in Rent Withholding |
| MANAGEMENT, LLC | : | Account #7885 |
| Appellant, | : | 303 Kirk Avenue |
| | : | Pittsburgh, PA 15227 |
| v. | : | |
| | : | <u>Copies Sent To:</u> |
| ALLEGHENY COUNTY HEALTH | : | Vijya Patel, Esq. |
| DEPARTMENT, | : | Clack Health Center, Building #7 |
| | : | 301 39 th Street |
| Appellee. | : | Pittsburgh, PA 15201 |
| | : | |
| | : | Diane Wheeler |
| | : | General Manager |
| | : | Three Rivers Property Mgmt. |
| | : | 6 Market Square |
| | : | Pittsburgh, PA 15222 |
| | : | |
| | : | David and Seina Smoshkovitz |
| | : | 6409 Brownsville Road |
| | : | Pittsburgh, PA 15236 |
| | : | |
| | : | Dorothy Young |
| | : | 303 Kirk Avenue |
| | : | Pittsburgh, PA 15227 |

**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 six months' worth of rent payments that she paid into a rent-withholding program. Dorothy Young ("Ms. Young" or "Tenant") lives in a house at 303 Kirk Avenue in Pittsburgh with her son. The house is owned by David and Seina Smoshkovitz, and is managed by Three Rivers Property Management ("Three Rivers").

On November 17, 2015, the Allegheny County Health Department (“ACHD”) determined that the house was unfit for human habitation, and issued a notice of violation to Three Rivers. The plethora of Housing Code violations at 303 Kirk Avenue include, among others: inadequate water volume to all fixtures, a porch in disrepair, a badly cracked concrete pad, exterior doors that are not weathertight, inadequate ventilation, and a substantial leak in a bedroom ceiling.

Between November 17, 2015 and May 17, 2016, Ms. Young paid her monthly rent into escrow under the City Rent Withholding Act. At the end of the six months, if the violations were corrected, the money in escrow would go to Three Rivers. If the violations were not corrected, the money would be returned to Ms. Young.

The issue is whether these violations have been corrected. Ms. Young and the ACHD contend that they were not corrected. Three Rivers argues that it made substantial repairs to 303 Kirk Avenue, and if violations were not corrected, it was because Ms. Young refused to allow the contractors to enter the house. Based on the evidence presented at the hearing, I find that the violations were not corrected, and that Ms. Young may recover the six months’ rent.

II. EVIDENCE

The following exhibits were offered into evidence by Three Rivers:

- A1: Ledger

The following exhibits were offered into evidence by the ACHD:

- D1: Inspection Report—November 17, 2015
- D2: Inspection Report—May 18, 2016

- D3: Series of Photographs
- D4: 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. Dorothy Young is the tenant of the property at 303 Kirk Avenue, Pittsburgh, PA 15227. (Hearing Transcript (“H.T.”) at 30).
2. The listed owners of the property at 303 Kirk Avenue are David and Seina Smoshkovitz. They currently live in Israel and employ Three Rivers to manage the property. (ACHD Post-Hearing Memorandum (“ACHD Memo”) at 2).
3. On November 17, 2015, the ACHD determined that 303 Kirk Avenue was unfit for human habitation. (Ex. D1).
4. Ms. Young participated in a six-month rent-withholding program administered by the ACHD under the City Rent Withholding Act, P.L. 1534, No. 536, between November 17, 2015 and May 17, 2016. (H.T. at 20-22, 24).
5. Under this program, Ms. Young has been paying her rent into escrow. (H.T. at 21).
6. At the end of the six-month period, if the landlord has corrected the violations, the money in escrow will be paid to the landlord. If the landlord has failed to correct the violations, the money in escrow will be returned to the tenant. (H.T. at 22).
7. A tenant may be eligible for the ACHD’s rent-withholding program under Article VI (Housing Code) if there are certain combinations of violations issued against the property on which the tenant lives. A tenant is eligible for the rent-withholding program if the property on which he or she lives has at least five class-three violations. (H.T. at 22).
8. As of May 18, 2016, the property at 303 Kirk Avenue had eleven class-three violations, and the ACHD determined it was unfit for human habitation. (H.T. at 22).
9. The Housing Code violations pertaining to 303 Kirk Avenue as of May 18, 2016—the day after the six-month rent-withholding period ended—include: Inadequate water volume to all fixtures at all times (Class 3); a broken front fascia (Class 4), missing pull chain on light bulbs (Class 4), a porch in disrepair (Class 4), no railing at the stair landing (Class 3), a badly cracked concrete pad (Class 4), an un-openable window (Class 4), exterior doors that are not weathertight in the living room and kitchen

(Class 4), inadequate ventilation in the dining room (Class 3), damaged brick columns (Class 3), a leak in a bedroom ceiling (Class 4), a missing rear porch (Class 3), and missing or loose mortar joints in a masonry wall (Class 4). (Ex. D2).

10. All the violations stated above were also present on November 17, 2015, the starting date of the rent-withholding period. (Ex. D1).

IV. DISCUSSION

In an administrative appeal of a final agency action of the ACHD, the appellant “shall bear the burden of proof and the burden going forward with respect to all issues.” Article XI § 1105.D.7. Therefore, Three Rivers bears the burden of proving by a preponderance of the evidence that Ms. Young is not entitled to recover the six months of rent payments that she paid into escrow.

Three Rivers makes two arguments in support of its position that Ms. Young should not be able to recover the rent she paid into escrow. First, Three Rivers points to the money it spent and the work its contractors did to attempt to fix the property. Second, Three Rivers argues that its contractors were unable to do repairs because Ms. Young would not let them into the house. Both arguments are unpersuasive.

Amount of Work Done

Three Rivers’ first argument is that it spent a substantial amount of money on repairs to 303 Kirk Avenue. Three Rivers mentioned several times during the hearing that it spent over \$12,000 on repairs to the house (H.T. at 5-6, 17, Ex. A1). But the problem isn’t how much money Three Rivers spent; the problem is that the Housing Code violations have not been corrected. Diane Wheeler, Three Rivers’ general manager and representative at the hearing, was questioned on cross-

examination about why there were so many problems with contractors not completing their work. The following exchange took place:

Q. [by Ms. Patel] But in terms of completing the work in a timely manner, because like you said, so far you spent \$12,000, so you would want to make sure you're not spending it in vain, that they're doing the work properly?

A. I mean, like I said, we didn't have the staff to constantly check up on the contractors when we first took over all these properties." (H.T. at 17).

Ms. Wheeler essentially admitted that Three Rivers—a property management company—could not adequately manage property. This is consistent with the litany of excuses Three Rivers offered for why the violations were not corrected.

For example, Ms. Wheeler complained several times during the hearing that the owners and previous property management company had left many houses in a “deplorable” condition, including 303 Kirk Avenue. (H.T. at 11, 42, 47). Additionally, Ms. Wheeler declared that Three Rivers could not deal with all the violations because “we only have so many contractors.” (H.T. at 12).

That may be true, but it doesn't address the core problem: The Housing Code violations were not fixed by the end of the six-month rent withholding period. The amount of money and effort that Three Rivers sank into 303 Kirk Avenue does not relieve them of their responsibility to fix the violations.

Refusal of Entry

Three Rivers also argues that its contractors could not make the necessary repairs because Ms. Young refused to let them enter the house. (H.T. at 4, 18). At

the beginning of the hearing, Ms. Wheeler stated that she relied on contractors' representations to her that the tenant was making it very difficult for the contractors to do their work. (H.T. at 4-5, Ex. A1).

There are two problems with Three Rivers' argument. First, many of the housing violations were exterior problems, which would not require the contractors to enter the house. Second, Ms. Young's testimony directly contradicts Ms. Wheeler's second-hand account, and Three Rivers presented nothing substantive to counter Ms. Young's testimony.

More than half of the Housing Code violations for 303 Kirk Avenue are exterior violations. (H.T. at 18, Exs. D1, D2). These violations include a missing fascia, missing railings, a porch in disrepair, a badly cracked concrete pad, and a dilapidated masonry wall. *Id.* Fixing these problems would not require a contractor to enter the house.

Moreover, Ms. Young's testimony directly contradicts Three Rivers' contention that she wouldn't let contractors into the house. The following exchange took place during the hearing:

“Q. [by Ms. Patel]: Did you ever refuse entry to your property?
A. No. I gave coffee...sandwiches. Because I was a little overwhelmed that they didn't have what they need when they get there. Because they were all coming in different cars. They never [were] coming in a contract truck.” (H.T. at 33).

Ms. Young's account is corroborated by a letter from her neighbor, Donna Williams, who repeatedly witnessed contractors enter and exit the house, and

emphasized, “When [the contractors] were there, someone was ALWAYS home to allow them inside also.” (Ex. D4) (emphasis in original).

Three Rivers offered very little to rebut Ms. Young’s account. On cross-examination, Ms. Wheeler was questioned about her assertion that Ms. Young wouldn’t allow contractors to enter the house. Ms. Wheeler responded: “Like I said, this is...the communication we received from the contractor....I mean, it was my understanding he was telling us that he needed to get into the property. So I mean, this is just the communication we were receiving directly from him.” (H.T. at 18-19). The only support for Three Rivers’ refusal-of-entry argument is this secondhand hearsay. As such, I do not accord it much weight.

V. CONCLUSION

Three Rivers has not met its burden of proof of showing that it corrected the housing violations at issue. Based on the evidence presented at the hearing, I find that Three Rivers has failed to correct the housing violations by May 17, 2016. Therefore, Ms. Young may recover the rent she paid into escrow between November 17, 2015 and May 17, 2016.

Max Slater
Administrative Hearing Officer
Allegheny County Health Department

Dated:_____