

ALLEGHENY COUNTY HEALTH DEPARTMENT  
ADMINISTRATIVE HEARING

CRC REAL ESTATE, LLC	:	In Re: Funds in Escrow Rent
c/o CARLTON COLLINS,	:	Withholding
	:	Account #7889
Appellant,	:	419 Bausman Street
	:	Pittsburgh, PA 15210
v.	:	
	:	
ALLEGHENY COUNTY HEALTH	:	
DEPARTMENT,	:	
	:	
Appellee.	:	

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

**I. INTRODUCTION**

The issue in this case is whether a tenant may recover the rent she paid into escrow during a six-month rent withholding program. From approximately December 2013 through September 2016, Tina Martin (“Tenant” or “Ms. Martin”) lived at 419 Bausman Street in Pittsburgh (the “Property”). Her landlord was CRC Real Estate, LLC (“Appellant” or “CRC”).

On March 29, 2016, the Allegheny County Health Department (“ACHD”) inspected the Property and issued a notice of violation to CRC. The plethora of Housing Code violations at the Property included, among others: unsecured electrical fixtures, a faulty water heater, an unsafe gas line installation, a porch in disrepair, broken concrete steps, and inoperable windows. The ACHD declared the Property unfit for human habitation.

Between April and September 2016, the Tenant paid her monthly rent into escrow under the Pennsylvania Rent Suspension Act.<sup>1</sup> At the end of the six months, if the violations were corrected, the money in escrow would go to Appellant. If the violations were not corrected, the money would be returned to the Tenant.

The issue is whether the Tenant may collect the money she paid into escrow during the six-month Rent Withholding Period. Appellant argues that the Tenant was ineligible to participate in the ACHD's Rent Withholding Program because she did not pay all of the required rent payments into escrow, and that she obstructed the Appellant's contractors from making repairs. The Tenant and the ACHD contend that the Tenant was eligible to collect the rent she paid into escrow even though she missed one month's payment, and that she did nothing to prevent the Appellant from repairing the violations. Based on the evidence presented at the hearing, I find that the Tenant may collect the money she paid into escrow during the Rent Withholding Period.

## **II. EVIDENCE**

The following exhibits were offered into evidence by CRC Real Estate, LLC:

A1: Letter dated February 2, 2017

A2: Money order receipts

A3: Disc of photographs

The following exhibits were offered into evidence by the ACHD:

D1: Inspection Report of March 29, 2016

D2: Inspection Report of May 25, 2016

D3: Inspection Report of September 30, 2016

D4: Rent Withholding Brief

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<sup>1</sup> Ms. Martin paid her April 2016 rent directly to her landlord, CRC.

The following exhibits were offered into evidence by the Tenant, Tina Martin:

T1: Terminix receipts

T2: Lease

T3: Rent receipts

### **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 March 29, 2016, the ACHD documented eight Class 3 violations and fifteen Class 4 violations at the Property, which led to the Property being certified as unfit for human habitation. (Ex. D1).
- 2) The Rent Withholding Period ran from March 30, 2016 to September 30, 2016.
- 3) The Tenant paid her \$700 rent check for April 2016 to Appellant. (Ex. A2; Hearing Transcript (“H.T.”) at 47-49).
- 4) The Tenant paid her rent for May through August of 2016 into escrow under the ACHD Rent Withholding Program. (H.T. at 54-56).
- 5) On September 30, 2016, the end date of the six-month rent withholding period, the ACHD conducted a second inspection of the Property. (Ex. D3; H.T. at 171-72). The inspector observed that no violations had been repaired, and that the Property remained unfit for human habitation. (Exs. D1, D3; H.T. at 172).
- 6) On October 24, 2016, Appellant’s new contractor, Robert Good, Jr., began repairing the Property, and completed the repairs several days later. (H.T. at 111, 156, 158).
- 7) On February 2, 2017, the ACHD notified Appellant that the funds in escrow would be released to the Tenant because the Property had not been certified fit for human habitation within the Rent Withholding Period. (Ex. A1).
- 8) An evidentiary hearing in this matter was held on April 19, 2017.

#### 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, Appellant bears the burden of proving by a preponderance of the evidence that the Tenant is not entitled to recover the money she paid into escrow during the rent withholding period.

##### **1) The Tenant was eligible to participate in the Rent Withholding Program.**

Appellant’s first argument is that the Tenant should not be allowed to collect the rent she paid into escrow because she was ineligible to participate in the Rent Withholding Program. (*Brief in Support of Appeal from Decision of ACHD Program Manager David Namey (“Appellant’s Brief”) at 2*). In support of its argument, Appellant cites the case *Glickman Real Estate Development v. Korf*, 446 A.2d 300 (Pa. Super. Ct. 1982). (*Appellant’s Brief at 2-3*). In *Glickman*, the Superior Court held that a landlord could collect rent money that tenants refused to pay into escrow during a six-month rent withholding period under the Pennsylvania Rent Suspension Act of 1966 (“PA Rent Withholding Act” or “Act”). 446 A.2d at 304.

But this case differs from *Glickman* in several respects. In *Glickman*, the ACHD observed new defects in a dwelling on February 21, 1979, and the tenants were eligible to start a rent withholding period on March 1, 1979. However, the tenants failed to make any rent payments during this period, despite occupying the dwelling for more than three months. *Id.* Additionally, the landlord corrected the violations before the tenants vacated the dwelling. *Id.* at 302.

Here, by contrast, the Tenant, Tina Martin, paid five months' worth of rent during the Rent Withholding Period, from March 30, 2016 to September 30, 2016. She paid \$700 to her landlord directly for April 2016. (Ex. A2, H.T. at 47-49). She then paid \$750 per month into escrow from May through August 2016. (H.T. at 54-56). Moreover, unlike the landlord in *Glickman*, Appellant did not fix the violations until after the Rent Withholding Period ended. (Ex. D3). Appellant's argument that the Tenant was ineligible for the ACHD Rent Withholding Program fails.

**2) The Tenant made all her required rent payments during the Rent Withholding Period, except for September 2016, and may collect the rent she paid into escrow.**

Appellant argues that the Tenant may not recover the rent she paid into escrow because she did not pay the entire six months' worth of rent into escrow during the Rent Withholding Period. (*Appellant's Brief* at 3). The PA Rent Withholding Act states in relevant part:

“[W]henver...[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

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.” (emphasis added).

Although it is true that the Tenant failed to pay her monthly rent for September 2016, the Act allows her to collect “any moneys” that she deposited into escrow, which in this case would be the amount she paid for May, June, July, and August of 2016. The plain language of the Act invalidates Appellant’s argument.

**3) The Landlord failed to make the Property habitable within the six-month Rent Withholding Period.**

On September 30, 2016, the end date of the six-month Rent Withholding Period, the ACHD inspected the Property, and found that all the violations identified at the beginning of the Rent Withholding Period were still present, and that the Property was unfit for human habitation. (Exs. D1, D3: H.T. at 171-72).

Appellant argues that the repairs were not made during the Rent Withholding Period because “the Tenant made it difficult for the landlord’s workers to repair the deficiencies identified by the ACHD.” (*Appellant’s Brief* at 3). However, the testimony and evidence indicates otherwise.

Appellant points out that it sent its contractor, Victor Allen, to make repairs on the Property. (H.T. at 111). Carlton Collins testified, “On a couple of occasions, I asked Vic to go there. Vic would go there and would say, ‘I’m knocking on the door and nobody is answering. All of the lights and everything are off.’” (*Id.*).

The inference that Appellant seeks to draw is that the Tenant was uncooperative with Appellant's attempts to make repairs. But under the terms of the lease, the Landlord or his agents have the right to enter the Property to make repairs. Clause 15 of the lease states, "Landlord or Landlord's agents may enter the premises in the event of an emergency, to make repairs or improvements, or to show the premises to prospective buyers or tenants." (Ex. T2). The lease does not state that the Landlord or his or her agents must obtain permission from the Tenant before making these repairs or improvements.

Later in the hearing, Victor Allen testified on direct examination that although he was unable to coordinate a time with Ms. Martin to make the repairs, this was due to scheduling conflicts:

"Q (by Mr. Earhart) : All right. You talked to [Ms. Martin]. Did you ever go over there to set up a time with her or to get over there and get access or what was the—

A: Well, I'd call, and we said, you know, that we'd get together to try to look at it, but we never did.

Q: Okay. All right. So it wasn't—

A: I'm not blaming her. I'm not blaming me. We just didn't get a chance to get together to fix the property. And then by that time, I was off the job."  
(H.T. at 144).

Mr. Allen's testimony indicates that he did not make repairs due to scheduling difficulties, not because of any obstructive actions by Ms. Martin. This testimony, coupled with Mr. Collins's, fails to demonstrate that Ms. Martin did anything to illicitly prevent Appellant from making the necessary repairs during the Rent Withholding Period.

**V. CONCLUSION**

Based on the evidence and testimony presented, Appellant has not met its burden of proof of showing that it corrected the housing violations at issue during the Rent Withholding Period, and its burden of showing that the Tenant is not entitled to the rent she paid into escrow during the Rent Withholding Period.

Therefore, Ms. Martin may recover the rent she paid into escrow between March 30, 2016 and September 30, 2016.

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Max Slater  
Administrative Hearing Officer  
Allegheny County Health Department

Dated:\_\_\_\_\_

Copies Sent To:

*Counsel for Appellant CRC Real Estate, LLC:*

Thomas Earhart, Esq.  
EARHART LAW OFFICES, P.C.  
4312 Old William Penn Highway  
Murrysville, PA 15668

*Counsel for ACHD:*

Vijya Patel, Esq.  
301 39<sup>th</sup> Street, Building 7  
Pittsburgh, PA 15201

*Counsel for Tenant Tina Martin:*

Meghan Tighe, Esq.  
NEIGHBORHOOD LEGAL  
SERVICES ASSOCIATION  
928 Penn Avenue  
Pittsburgh, PA 15222