

FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

VINE INVESTMENT COMPANY

FILE NO. DHM-86-002

from an order to rent and
repair conveying Director's
complaint

Introduction

Appellant, Estate of Violet Diamond, d/b/a Vine Investment Company, appealed the Order to Rent and Repair Concerning Director's Complaint for premises at 1818 Terry Avenue. A public hearing was held in the matter on October 6 and 29, 1986. Appellant was represented at hearing by Gustav Kostakos, Gustav Kostakos and Associates, and the Director, Department of Construction and Land Use, was represented by the City Attorney, James E. Fearn, Jr., assistant.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code unless otherwise indicated.

After due consideration of the evidence elicited during the public hearing, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject of the Order to Rent and Repair Concerning Director's Complaint is a 32-unit apartment building at 1818 Terry Avenue.

2. A City housing and zoning inspector, David Ertter, inspected the subject building in October, 1985, for compliance with the Downtown Housing Maintenance Ordinance. He noted all violations of the Housing Code which he recorded in his field notes, Exhibit 1.

3. A hearing was held by the Department of Construction and Land Use on May 1, 1986, pursuant to Section 22.220.130E. Following that hearing, the Order to Rent and Repair Concerning Director's Complaint (order) was issued on July 9, 1986, listing the items needing repair or correction. Exhibit 5. The items are grouped by Housing Code section headings under the following classifications: inadequate sanitation, inadequate maintenance, inadequate electrical system, inadequate fire safety, inadequate security and duties of owners.

4. On September 26, 1986, a Notice of Violation Habitable Building was issued by the Director, Department of Construction and Land Use, pursuant to the Housing Code.

5. The subject building has three floors of living units and a basement level with laundry room and storage. Each unit has either a wash basin (lavatory) or kitchen sink. There are two toilet rooms and one bathroom with tub on each floor.

6. Required corrections 1.a., c. and d. involved plumbing. Item 1.a. cites inadequate hot and cold water pressure in all units and corroded and leaking main water lines in the basement. Plumbing-related items in 1.c. and d. include an unvented lavatory drain in unit 8, worn lavatories in 8 units, defective lavatory drains in 6 units, deteriorated bathtub and broken toilet tank cover.

7. The Department's plumbing expert, Salvatore Scalzo, a licensed plumbing contractor with "rehab" experience, would replace the main water supply lines with larger-sized pipe, replace the lead bends in toilet areas and lead pipes for sinks where leaking, would purge the pipes and replace only those which are still clogged and replace sinks as needed. Scalzo finds the hot water boiler needs a larger pump and return lines and would do a retrofit of that recirculation system.

8. The Department's estimate for corrections of the plumbing items is approximately \$25,000 plus sales tax. That estimate assumes abandoning in place replaced pipe and wall mounting new pipes. The price includes repair with sheet rock of plaster broken during installation and repair of any flooring removed.

9. Appellant's witness testifying as to plumbing repairs, Phillip Ceis, now a building consultant retired after forty years of contracting, provided an estimate of \$56,000 for plumbing repair which includes replacing all pipes in the building. Scalzo agrees this is a reasonable estimate for replacement of all pipes but maintains that it is unreasonable to do that.

10. Both parties' witnesses agree that replacement of worn fixtures would be less expensive than repairing those fixtures. Both parties' witnesses agree that lead bends have to be replaced. Both parties' witnesses agree that the hot water boiler is not functioning properly and may need adjustment or repair.

11. The examiner views Scalzo's more specific expertise in this area of plumbing as reason to give his opinion more weight.

12. Items 3.a., b. and c detail the corrections required to the electrical system. Problems include use of extension cords throughout, some exposed wiring, insufficient convenience outlets, defective light switches, loose electrical subpanel and overheated and charred wiring under the roof.

13. The City's inspector was not able to observe most of the wiring except that in the attic area.

14. The Department's witness with electrical expertise was Robert Collins, a licensed electrical contractor since 1975, electrician for 7 to 9 years prior to becoming a contractor, who is also an electrical administrator. Collins has done the electrical work for the rehabilitation of a number of Pioneer Square buildings. After inspecting the Terry Avenue Apartments he provided an estimate of \$17,000 plus sales tax to keep the building "electrically habitable." Collins found the service to be antiquated and misused so would need to be replaced with new panels. He would not replace all the wiring, only that which was demonstrably bad. He would add lights to the hallways for security with new conduit run down the halls for that lighting. Collins was not aware of code violations but estimated the cost of replacing light switches at \$40 to \$50 each and the cost of new outlets at \$40 to \$50 each.

15. The Department's cost estimate does not include any repair of damage to the plaster caused by wall-mounting the wiring.

16. Collins was at the building for less than 2 hours and did not observe any charred wiring except that inside the service panel. He does not believe that the wiring has necessarily deteriorated.

17. Approximately one week prior to the second hearing day, 3 units lost power when the wiring broke and grounded out on a gas pipe. Because fuses had been replaced in the panel by coins, the current did not shut off and the pipe became extremely hot. A fire easily could have occurred.

18. Appellant's electrical witnesses, Ceis and John Branch, a licensed electrical contractor, electrician and administrator, inspected the electrical system. Branch would replace the service panels and replace all wiring because he finds it to be totally deteriorated. The insulation is crystalized and crumbles off. If the wiring is replaced, he contends that the system must meet the current electrical code including two appliance circuits per kitchen. He would add hall lighting, emergency hallway lights at the end of halls with battery backup, an outlet in each hallway, a circuit for the washer in the basement, outside lights and a GFCI outlet in the bathrooms. The cost of doing this work plus a fire alarm, to be discussed infra, he estimates to be \$41,150 plus sales tax. He would try to mount the wires on the surface but would expect plaster damage. The cost of repairing any damage is not included in his estimate.

19. Collins agrees with Branch's estimate of the cost of replacing the entire electrical system but not that it should be replaced. The rewiring would be less than that listed in Exhibit 6, Ceis' summary of cost of corrections, which shows \$60,000 for rewiring, \$18,750 more than Branch's estimate.

20. Ceis believes that the state of the wiring is so bad that the building should not be occupied.

21. Open flame gas hot plates in 14 units were cited as needing correction under Item 1.b. The Department's cost estimate does not include replacing those hot plates.

22. Item 2.a. lists decayed window sashes, frames and sills throughout, loose and missing window glazing compound throughout and ill-fitting windows in six places. The inspector feels the windows need to be replaced throughout. Another Department's witness, English, who prepared the Department's cost estimate, disagreed. Exhibit 3 shows the estimated cost of correcting decayed window sashes, frames and sills to be \$8,000 plus several hundred dollars for specific repairs. The amount and breakdown suggests that English used his opinion as to which windows needed repair instead of the order issued by the Director.

23. Appellant's estimate of the cost to replace 75 window sashes and repair the frames is \$16,875 which is an average of \$225 per window. Appellant also shows costs in individual units for frames, which costs may duplicate part of the total.

24. Item 2.b. lists broken or damaged wall or ceiling covering in one unit, one toilet room, one bathroom and a hallway, decayed flooring in the laundry room and broken sash cords in two units.

25. Photo exhibits 12-2, 12-3 and 12-4 show three units with severe damage to the wall covering, i.e., plaster and lath missing, and Ceis' survey identified other serious damage.

26. The Department did not present a specific estimate of the cost of correcting the problem cited in 2.b. Appellant estimates the cost at \$100 to repair the wall in unit number 22 and \$100 to repair the ceiling in the men's toilet room. Appellant proposes to repair the hole in the wall in unit number 17 for \$110, in 18 for \$100 and a hole in the ceiling in 18 for \$100, repair a hole in the wall in unit number 30 for \$50 and remove loose wallpaper and seal in several other rooms at a cost of \$165. These amounts were not challenged.

27. The laundry room flooring is wood placed on top of sleepers placed directly on top of the dirt. The wood flooring has rotted away. The Department's witnesses would have the rotted wood replaced acknowledging that it would eventually decay as well. No separate cost was estimated by the Department for this repair.

28. Appellant's witness Ceis proposes pouring a concrete floor at an estimated cost of \$2,820.

29. To replace the deteriorated bathtub enclosure cited in Item 1.d. would cost \$250 according to Ceis. No separate figure was provided by the Department.

30. Item 4 requires correction of the loose portion of the fire escape on the west side of the building. English did not assign a specific cost to that repair but testified that \$25 would be reasonable cost for the reattachment necessary.

31. Detroit testified that all screws on the escape should be checked. Ceis testified that all bolts on the fire escape are loose and the fire escape is rusted so it should be checked over carefully. He estimates the cost of labor and equipment to refasten the fire escape at \$450.

32. Neither party provided a specific cost for Items 5.a. and b. Ceis estimated that removal of junk and debris from apartments and the basement would cost approximately \$2,000. Item 6.a. only cites unit 29 as filled with junk and debris so the cost estimated, if any, by the Department would have been less.

33. Replacement or addition of smoke detectors is estimated by the Department's witness English to cost \$50 per smoke detector. The Department's electrical expert, Collins, estimates the cost of smoke detectors and a minor fire alarm system to be \$2,000 to \$3,000. Ceis estimated the cost of a new fire alarm system to be \$960 or \$30 per unit but did not specifically address smoke detectors.

34. Also included in Item 1.d. are the worn counter top in unit 12 1/2 and worn kitchen sink in unit 11 1/2. Ceis estimates the cost of those repairs to total \$150 assuming the sink to be included in the cost of the complete replumbing of the building. No specific estimate was provided by the Department.

35. In addition to the items cited in the order, appellant contends that other repairs must be made to make the building comply with the Housing and Fire Codes and/or "habitable". Cost estimates were prepared by appellant for each. The Department did not present any evidence rebutting the cost of any of those repairs.

36. Appellant's witness, Branch, conferred with fire department personnel and determined that a fire alarm system would be required which could project an alarm at a level of 60 dB inside of the units, heat detectors in storage areas and pull stations at the exits. He estimates that cost to be \$1,650 more than that in his original estimate for wiring.

37. The roof on the building has been recovered or repaired twice in the 7 years that Tennis DeJong has been director of property management for Rainier Properties. Eugene Detroit had given a bid on a new roof years ago. He has been called on to patch it when it has leaked. He examined the roof prior to the hearing and found it to have a rotten layer of shiplap topped by four or more layers of paper. Large bubbles have formed from condensation. Detroit believes a new roof is definitely needed.

38. Ceis examined the roof and determined there will be leaks in the next 2 to 3 years if it is not replaced but does not discount reports that there now may be some leaking. The current roof is mineral-surfaced felt over layers of old roofing, he found. He estimates the cost of reroofing to be \$8,000. Flashing capping the parapets is rusted and needs to be replaced.

39. Neither inspector Ertter nor English looked at the roof.

40. The building is sheathed in asbestos shingles with metal on the corners. Some pieces of siding and metal are missing or broken. Many nails in the siding are loose, some enough to be pulled out and pushed in with fingers. They may have been loosened by building movement, the material underneath may be deteriorated or the nails may be in seams in the under material. No evidence of the entry of water from the defective siding was adduced.

41. If replacement of a small number of shingles is considered to be "incidental" repair under asbestos regulations then all of the special requirements for working with asbestos would not be invoked, according to English. Ceis would attempt to repair the siding by sliding in aluminum shingles since asbestos would not be available. The cost for doing that, including equipment rental, would be \$1,285. If asbestos regulations apply to the repairs, the cost could be up to \$20,000.

42. The post supporting the building over the basement level walkway at the northeast corner of the building has been hit and is leaning and is rotted. Replacement is estimated to cost \$300.

43. The walkway on the north side of the building slopes to the middle from each end. Water runs to the middle and may be leaking under the footings, according to Ceis. He proposes to remove the old paving, install a drain system and repave the walkway at a cost of \$2,310.

44. Gaps around the window frames admit cold air and water into the building according to Ceis. The window frames could be caulked for \$1,260.

45. The illegal hot plates and old gas stoves could be replaced with gas or electric cooking units in all apartments for \$8,000.

46. Inspector Ertter observed that the heat was on during his inspection but he did not examine the boiler. English questioned the tenants about the building but heard no complaints about the heating system. Detroit testified that the oil-fired furnace is very old and the hot water boiler was in bad shape ten years ago. Ceis found the heating system to be inefficient; the fire boxes burned out; some pipping is not working; pipes are wrapped in asbestos. Replacement, at \$20,000, would not be more expensive than rebuilding.

47. Some deflection of the floors was observed by most witnesses who inspected the building. None found the deflection to interfere with use of the building.

48. Stairs and stair coverings are worn but not dangerous.

49. The foundation of the building is probably concrete for 2 ft. with brick on top, then framed. The wall is 8 in. thick with a 4 in. footing on the inside. Detroit observed some cracks in it with some water leakage but found that not unexpected in a building 70 or 80 years old. A contractor who looked at the foundation in April, 1986, found the south side had settled up to 4 in. To correct the settlement would require jacking up the building to reinforce the foundation at a cost of approximately \$7,000 plus sales tax. There was no evidence that the foundation is unsound.

50. Rodney Christopherson, a general contractor who had been a specialty contractor in the past doing framing and finishing, found the plaster on the walls of the building to be very loose having lost its "keyway", the plaster behind the lath which holds it on. Detroit inspected the walls and found the plaster loose from the lath. He feels only the wallpaper holds it on. Neither Ertter nor English checked the walls, except where damaged, so offered no opinion.

51. If the condition of the walls is as described, considerable damage is likely during wiring and plumbing activity. Repair was included in the Department's plumbing estimate but not in the wiring estimate. Appellant's finishing witness testified that it would not be feasible to repair the plaster so it would have to be replaced with sheet rock if damaged.

52. Ceis estimates that replacing the plaster with sheet rock would cost \$46,848. This figure assumes that the building would be replumbed and rewired and contemplates completely sheet rocking the interior of units and common areas.

53. The cost of removing waste materials from the repairs of the building proposed by appellant is estimated at \$5,600. If the old furnace is not removed, the plaster is not removed, the roof is not reroofed, etc. the waste should be substantially less.

Conclusions

1. The Hearing Examiner has jurisdiction in this matter and over these parties pursuant to Section 22.220.140, Seattle Municipal Code.

2. It is the duty of owners of low income rental units to repair those units when they can "feasibly be made habitable." Section 22.220.070. The section explains that if the cost of repairs does not exceed \$4,000 per unit, the repairs are feasible. "Hhabitable" is not defined, however, there is no disagreement between the parties that that minimum standards of the Housing Code and the Fire Code should define habitability for this purpose. Further, the rule of construction that when a word is not legislatively defined the common definition is intended is not particularly helpful where "fit to be lived in", the dictionary definition, Webster's New World Dictionary, 2nd College Edition (1978), leaves considerable latitude to determine what repairs are necessary to make the building fit to be lived in.

3. The minimum standards for habitable buildings are set out in Chapter 22.206, Habitable Buildings. Even more helpful in deciding what is necessary for minimum habitability is the list of high hazard conditions in Chapter 22.208 for buildings unfit for human habitation. Each condition on the list and found at the subject property must be evaluated as to the extent of the hazard as it affects the health or safety of the occupants of the building.

4. Under the section relating to sanitation, two issues were raised: whether cooking units must be replaced and whether existing plumbing needs to be replaced. Section 22.206.050.E requires cooking appliances "or adequate space for their installation." Therefore, those removed need not be replaced to meet the minimum standards for an habitable building. As to the plumbing, the second issue, the two experts disagreed. Because the Department's witness was more persuasive that not all the plumbing would necessarily be defective and no high hazard is associated with potential leaks, only the defective plumbing need be replaced. The Department's cost estimate then should be used.

5. Section 22.206.080 addresses the standard of maintenance. That standard uses terms such as "reasonably weather tight", "sound conditions" and "good repair". Consideration of the high hazard conditions for windows, floors, interior and exterior walls, etc., provides better understanding of the degree of soundness or quality of repair needed. Those high hazard conditions are:

- B.1. Crumbling, broken, loose, or falling interior of wall or ceiling covering,
2. Broken or missing doors and windows,
- ...
4. Deteriorated, ineffective, or lack of exterior wall covering,
5. Deteriorated, ineffective, or lack of roof covering,
6. Broken, split, decayed or buckled exterior wall or roof covering;...

6. The parties did not disagree that window sashes, frames, etc., throughout needed replacing. The difference in cost in the replacement may reflect the estimator's opinion which differed from the inspector's opinion, however, the inspector's opinion is given greater weight. Appellant's evidence showed that there was more damaged interior wall covering than that cited. The most controverted issue under this category is whether new siding and roofing is required to meet the minimum standard of habitability. There was no evidence that the condition of the siding or roofing was actually endangering health or safety. While not in good repair, the building was not shown to be actually leaking. Leaks from the roof are projected in 2 to 3 years by Mr. Ceis. While reroofing would avoid that situation, there was no showing that continued patching could not maintain the current condition for years more. The exterior walls and roof do not meet the standard of "good repair" however residing and reroofing would far exceed the minimum necessary to avoid a finding that the building is unfit for human habitation under Chapter 22.208.

7. The minimum standard for heating is a facility capable of providing an inside temperature of 65°F. when the outside is 20°F. For a high hazard condition, the system must fail to maintain a temperature of 58°F. While the evidence showed an antiquated and inefficient system, it did not demonstrate that the system could not meet either of these standards.

8. The order required certain corrections to meet the minimum electrical equipment standard of Section 22.206.110. Appellant urges that a complete rewiring is necessary to make the building habitable, presumably relying upon the requirement under Chapter 22.206 that it be "safely maintained." The high hazard condition for electrical equipment is "defective, deteriorated, or hazardous electrical wiring." Section 22.208.010.D.2. All witnesses agreed the service is overloaded and hazardous and must be replaced. The order cited charred wiring in one place. The insulation was found to be deteriorated. The unexplained broken wiring effecting a loss of power to several units shows how hazardous the wiring is. The Department's electrical witness would await further problems and replace only that wiring. With the example of defect and deterioration, the system has to be regarded as a high hazard condition and be replaced. The Department's witness agreed that the cost estimate of \$56,000 for rewiring was reasonable.

9. The Housing Code's fire safety standards, Section 22.206.120, includes structurally sound fire escapes. Appellant's witnesses were convincing that if the loose fire escape is to remain, the remainder of the fastening devices should be checked and reattached if necessary at a cost of more than the \$25 estimated by the Department. The estimate of \$450 provided by appellant does not appear unreasonable.

10. The minimum standards of the Fire Code must also be met for habitability. Appellant's evidence that an alarm system would be required with certain emergency lighting was unrebutted so will be accepted. The estimated cost was not shown to be unreasonable.

11. Those duties of owners not met and deemed to be necessary for habitability under Section 22.206.150, are to supply smoke detectors throughout and to remove junk and debris. Appellant would remove junk and debris from the basement and other areas as well as the one unit. There was no evidence that the debris did not exist further the cost estimated was not shown to be an unreasonable cost.

12. Another high hazard condition, "3. Members of walls, partitions, or other vertical supports that split, lean, list or buckle," Section 22.208.010, was shown to be present in the form of the leaning and decayed post at the corner of the building. That condition must be corrected. "Weakened, deteriorated, or insecure" foundations may be a high hazard condition if they endanger or injure health or safety of the occupants, however, the evidence showed merely settling and a crack without more.

13. Because the rewiring of the building may cause further damage to the interior wall covering, the cost of repair is likely to be higher than estimated by the Department. It is not reasonable to expect that the entire interior of the building's wall covering must be replaced however.

14. One violation of the minimum standards of the Housing Code was cited in the Notice of Violation but not in the order: inadequate water temperature. Witnesses for both parties agreed that some repair or adjustment was necessary. Neither side provided a separate cost estimate for those repairs.

15. Taking Ceis' total cost estimate, corrected for the arithmetical error, as a beginning point because of its greater specificity and deducting those items which are not needed for minimum habitability and making other adjustments results in the following:

Corrected total (before taxes)	\$ 237,418
Adjustment to wiring estimate (\$60,000 - \$41,250)	(18,750)
Adjustment for plumbing (\$56,000 (Ceis) - 25,000 (Skalzo))	(31,000)
Elimination of new furnace	(20,000)
Elimination of new roofing	(8,000)
Elimination of total wall repair	(46,848)
Elimination of cooking unit replacement	(8,000)
Elimination of clean up costs	(5,600)
Elimination of cost of stair repair	(370)
Elimination of repaving	(2,710)
Additional cost of alarm system	1,650
Adjustment to cost of laundry room floor (reasonable cost should not exceed 1,000)	(1,820)
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	\$ 95,970
Plus: Additional wall repair	10,000

Hot water repairs	<u>1,000</u>
	\$106,970
Tax (using 7.9 rate used on estimate)	<u>8,450</u>
	\$115,420

At the estimate of \$115,420, the per room cost would be \$3,607 which is less than \$4,000 per unit. The order then should be modified to add replacing of the deteriorated wiring and other corrections found above to be necessary for habitability.

Decision

The Order to Rent and Repair is affirmed modified to add the following items needing repair or corrections:

2.b. Missing, broken or damaged wall or ceiling covering in units 17, 18, 22 and 30, first floor men's toilet room, third floor bathroom, third floor hallway; decayed flooring in laundry room; broken window sashcords in units 12 and 33.

2.c. Leaning and rotten support pole at northeast corner of building.

3.d. Deteriorated wiring throughout.

3.e. Inadequate fire alarm and fire safety system.

Entered this 1st day of December, 1986.

M. Margaret Klockars
M. Margaret Klockars
Deputy Hearing Examiner

Concerning Further Review

Any appeal of this decision must be filed in the Superior Court within 30 days of the date of the decision.