

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

In the Matter of the Appeal of

EDWON PETERS

FILE NO. H-79-001

from an Order of the Superintendent
of Buildings pursuant to the Housing
Code (106379)

The appeal is PARTIALLY GRANTED.

Introduction

Edwon Peters, appellant, filed an appeal from an order of the Superintendent of Buildings under the Housing Code relating to property at 3813-37th Avenue South.

This matter was heard before the Hearing Examiner on April 17, 1979.

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

Findings of Fact

1. The subject property is a non-owner occupied duplex dwelling at 3813-37th Avenue South. Appellant and Blanche Peters own the subject property.

2. On January 19, 1979, the building was inspected by a Building Department inspector in response to a tenant complaint. A Notice of Violation dated February 2, 1979, was served on appellant February 3, 1979.

3. A hearing was held on March 15, upon Blanche Peters' request for reconsideration. Appellant and Mrs. Peters were both present. The Order of the Superintendent of Buildings following reconsideration sustaining the earlier order was then served upon appellant March 20, 1979. The instant appeal was filed March 23, 1979. The order was mailed to Blanche Peters but was not accepted.

4. Violations 1(a), 1(b), 2(a) and 2(c) were acknowledged and have been remedied.

5. Testimony showed tenants to have been the cause of most of the above violations having misused the electrical system and facilities and plumbing facilities. Legal action to evict the complaining tenants for nonpayment had been initiated by the owner and have been completed.

6. The other cited violation, 2(b), was for the electrical service panel which is not accessible to the tenants as required by the Electrical Code. The appellant contends that satisfying this provision's requirement would lead to violation of another provision - that which prohibits use of larger fuses and coins by the tenants creating a fire hazard. Appellant has tried the fuse stats suggested by the Department only to have tenants break them out.

Conclusions

1. Section 4.16, Housing Code, places certain duties upon the tenant including the exercise of reasonable care in the use and operation of electrical and plumbing fixtures and to repair all damage to the building caused by negligent

or intentional act of the tenant.

2. The only evidence adduced at hearing was that at least violations 1(a), 1(b) with the exception of the tape on the drain pipe, 2(a) and 2(c) were caused by the negligent or intentional actions of the tenant.

3. Section 4.21 further directs the Superintendent to cause to serve upon the "owner, tenant, or other person responsible for such condition" the notice. While the provision is not clear as to whether "responsible" refers to the creation of the condition or for the correction of the condition, the duties imposed upon the tenant by Section 4.16 would make the tenant the "responsible" party for these conditions since they also caused them.

4. Under the existing code the violation listed as 2(b), service panel not accessible to tenants, is correct. The duty imposed upon the tenant to exercise reasonable care and the prohibition against use of larger fuses or coins are the code's protections for the owner who must make the panel accessible. The reality is that if the tenant does not live up to this duty the owner's only recourse is to change tenants.

Decision

The appeal is GRANTED and the Superintendent's decision is reversed as to the owner for violations numbered 1(a), 1(b) except for taped drain, 2(a) and 2(c). The appeal is DENIED and the Superintendent's decision is affirmed as to 2(b).

Entered this 2nd day of May 1979.

M. Margaret Klockars
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Deputy Hearing Examiner

Notice of Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).