

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

NINA AGABIAN

FILE NO. H-82-001

from a decision of the Director of the Department of Construction and Land Use pursuant to Title 22, Subtitle II, Seattle Municipal Code (Housing Code, Ordinance 106319)

Introduction

Appellant, Nina Agabian, appeals the Order of the Director Following Reconsideration of Notice of Violation, Habitable Building. The Notice of Violation was for premises at 2360-43rd Avenue East, Unit No. 307.

The appellant exercised her right to appeal pursuant to Section 22.206.230, Seattle Municipal Code (Section 4.23, Ordinance 106319).

The parties agreed to submit the matter to the Hearing Examiner on written memoranda. Appellant was represented by David G. Shenton, Casey, Pruzan and Kovarik. The Director of the Department of Construction and Land Use was represented by James E. Fearn, Jr., Assistant City Attorney.

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. Appellant, Nina Agabian, entered into a written lease agreement to rent a condominium unit for the term, December 4, 1980, through November 30, 1981, to Sharon McLaren. Appellant agreed to allow the tenant to remain in the unit after the expiration of the lease until January 15, 1982.

2. When the tenant failed to vacate the unit, appellant commenced an unlawful detainer action serving the tenant on January 16, 1982.

3. The Department of Construction and Land Use (DCLU) issued a Notice of Violation for attempting to evict the tenant without good cause as set forth in Section 22.206.150C, Seattle Municipal Code.

4. A hearing before the hearing officer of DCLU sustained the Notice of Violation on appeal.

5. Appellant filed the instant appeal with the Office of Hearing Examiner.

6. Section 22.206.150C states:

Owners shall not evict or attempt to evict any tenant or otherwise terminate or attempt to terminate the tenancy of any tenant except for

good cause. The reasons for termination of tenancy listed below, and no others, shall constitute good cause under this section:

...

Thereafter are listed seven reasons for termination, which do not include termination upon expiration of a lease.

7. Section 22.206.150D provides:

Any lease or rental agreement provision which waives or purports to waive any right, benefit or entitlement created by this chapter shall be deemed void and of no lawful force or effect.

8. RCW 59.18.220 states:

In all cases where premises are rented for a specified time, by express or implied contract, the tenancy shall be deemed terminated at the end of such specified time.

9. RCW 59.18.030(8) defines "tenant" as "...any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement."

Conclusions

1. Appellant contends that under state law the tenancy is terminated at the end of the time specified in the lease agreement so McLaren, no longer being a tenant, the City provision would be inapplicable. Appellant further urges that the prohibition against eviction conflicts with the unlawful detainer provisions of state law.

2. Appellant is correct that McLaren would no longer be a tenant protected by Seattle Municipal Code Section 22.206.150C by operation of the terms of the lease agreement and state law, RCW 59.18.220 and .030(8), except for the further provision, Seattle Municipal Code Section 22.206.150D, which voids any lease agreement provision which waives or purports to waive the benefits of the code. With the provisions creating the term voided, the eviction provision is applicable.

3. Appellant's argument that the City's enactment conflicts with or is preempted by state law is answered by Kennedy v. City of Seattle, 94 Wn.2d 376, 617 P.2d 713 (1980). There the Court rejected a similar contention as to Seattle's floating home ordinance eviction provision finding no express or implied preemption nor irreconcilable conflict with RCW 59.12 or RCW 59.18 in that the provision merely provides an additional defense for the tenant. Appellant has not established any difference between the eviction provision in Section 22.206.150C and the floating homes provision which would dictate any different result.

4. The decision of the Director is to be regarded as prima facie correct by the Hearing Examiner. Section 22.206.230. The reason for eviction not being among those for which eviction is permitted, the lease agreement provision waiving the code's protection to be deemed void and no irreconcilable conflict with state law shown, the decision should be affirmed.

Decision

The decision of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 26th day of March, 1982.

M. Margaret Klockars
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Deputy Hearing Examiner

Notice of Right to 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 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418(1977); JCR 73(1981). A copy of this decision shall be filed with the King County Division of Records and Elections.