

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

In the Matter of the Appeal of  
J&B DEVELOPMENT COMPANY, INC.

FILE NO. H-81-002

from an Order of the Director of  
the Department of Construction  
and Land Use pursuant to the  
Housing Code, Ordinance 106319

Introduction

J&B Development Company, Inc., appellant, filed an appeal from an order of the Director of the Department of Construction and Land Use (Director) regarding an alleged Housing Code violation at 5216-18th Avenue S.W.

The appellant exercised its right to appeal pursuant to Section 4.23 of the Housing Code, Ordinance 106319.

Parties to the proceedings were: Appellant, represented by Rynold C. Fleck, Snure and Fleck, P.S., and the Director represented by Clifford Hester, Manager, Citizens Complaint Section, Housing and Zoning Enforcement Division, Department of Construction and Land Use.

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 tenant occupied, single family residence at 5216-18th Avenue S.W.
2. Appellant owns the subject property.
3. When rented to the present tenant(s) the windows in the subject property were intact.
4. A complaint was received by the Department of Construction and Land Use on November 3, 1980, from the tenant(s) of the subject property that the landlord refuses to replace broken front room and kitchen windows.
5. A Notice of Violation of Section 4.15, Ordinance 106319, as amended, and order to correct the violation dated November 12, 1980, was mailed to appellant.
6. Appellant requested and received a hearing before the Director pursuant to Section 4.22 after which the Notice of Violation was sustained.
7. Appellant filed its Notice of Appeal January 16, 1981.
8. Evidence as to the cause of the broken windows was inconclusive.

Conclusions

1. Section 4.15A(1), Ordinance 106319, as amended, requires an owner of a building to maintain the building in compliance with the minimum standards of Section 4.02-4.13, except for those duties imposed on the tenant by Section 4.16.

2. Section 4.08, Ordinance 106319, as amended, requires that windows be "reasonably weathertight, watertight, damp free and rodentproof; and shall be kept in a sound condition and good repair."

3. Section 4.16, Ordinance 106319, as amended, makes it the duty, inter alia, of the tenant to repair damage to the building caused by the negligent or intentional act of the tenant or invitee or licensee.

4. The Residential Landlord-Tenant Act provides:

The landlord will at all times during the tenancy keep the premises fit for human habitation; and shall in particular:

(5) Except where the condition is attributable to normal wear and tear, make repairs and arrangements necessary to put and keep the premises in as good condition as it by law or rental agreement should have been, at the commencement of the tenancy ...

(11) ... No duty shall devolve upon the landlord to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, where the defective condition complained of was caused by the conduct of such tenant, his family, invitee, or other person acting under his control .... RCW 59.18.060.

Each tenant ... in addition shall:

(6) Upon termination and vacation, restore the premises to their initial condition except for reasonable wear and tear .... RCW 59.18.130.

5. Appellant urges, as the basis of its appeal, that the City Housing Code, as applied, is violative of Article 11, Section 11, Washington State Constitution, which provides that local governments may not make and enforce laws which conflict with the general laws of the State. Stephanus v. Anderson, 26 Wn.App. 326 (1980).

6. The City Ordinance does not conflict with the Landlord-Tenant Act since the ordinance, like the state act, relieves the landlord of the duty to repair damage or defective conditions negligently or intentionally caused by the tenant or invitee or licensee. The landlord is required to otherwise repair to meet minimum standards in one case and to put in as good condition as it was at the commencement of the tenancy in the other.

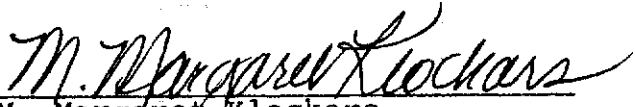
7. Appellant contends that the City Ordinance also conflicts with state law because RCW 59.18.130(6) imposes the duty on the tenant to restore the premises in their original condition at the end of the tenancy. That provision excepts those conditions caused by the landlord's failure to comply with its obligations. With the exception provided the tenant is able to satisfy that requirement even if the landlord fails to make repairs it is obligated to make, i.e., repair broken windows.

8. There is no conflict between the duties imposed on the landlord and tenant under City and State law in the circumstance of the instant case. The duty to repair the windows is on the landlord unless caused by the negligent or intentional act of the tenant, etc. Since the Director's order is to be deemed to be prima facie correct, Section 4.23, Ordinance 106319, as amended, and appellant failed to prove the contrary, the Director's Notice of Violation and Order must be affirmed.

Decision

The Director's Notice of Violation and Order is hereby  
AFFIRMED.

Entered this 27<sup>th</sup> day of February, 1981.

  
M. Margaret Klockars  
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).