Dep't of Housing Preservation & Development v. Weise

OATH Index No. 2732/08 (Jan. 12, 2009)

Respondent seeking certificate of no harassment for single room occupancy building. ALJ found that the evidence, consisting of tenant testimony as to the conditions and a number of violations, was insufficient to support a finding that the tenants were deprived of essential services during the inquiry period. The owner's contentions that services were maintained and that disruptions were infrequent were found largely corroborated and credible. The evidence was therefore found inadequate to establish harassment, and the owner's application for the certificate of no harassment should be granted.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT
Petitioner
- against -
MARTIN WEISE
Respondent

REPORT AND RECOMMENDATION

JOHN B. SPOONER, *Administrative Law Judge*

This is a proceeding commenced by petitioner, the Department of Housing Preservation and Development, pursuant to Local Law 19 of 1983, the Single Room Occupancy ("SRO") anti-harassment statute. Admin. Code § 27-2093 (Lexis 2009). Petitioner seeks a finding that harassment of tenants occurred at the premises 614 West 138th Street, New York, New York, during the period from February 22, 2002, to date.

At a four-day hearing held before me on September 12 and 19 and October 6 and 20, 2008, petitioner presented records showing violations and past tenant complaints, as well as the testimony of three tenants and inspectors who visited the premises during the inquiry period. Respondent testified and offered documentation and the testimony of the building superintendant to corroborate his assertion that essential services were provided.

For the reasons explained below, I find the proof insufficient to prove that harassment occurred as alleged in the petition and recommend that respondent's application be granted.

ANALYSIS

The premises here is a four-story multiple dwelling with a cellar. The 1971 certificate of occupancy (Pet. Ex. 11) indicates that the building is approved for occupancy as an apartment and ten furnished rooms, with an apartment and one room on the first floor and three rooms on each of the upper three floors. It was undisputed that, some time after 1971, the rooms in the building were converted into apartments without a building permit. Thus, respondent Martin Weise, the owner of the building, testified that, when he purchased the building in 1996, the building no longer contained SRO rooms in that it had been converted to seven rent-stabilized apartments (Tr. 399-401). According to floor plans (Resp. Ex. U) submitted to the Department of Buildings ("DOB") in 2005, there are now a three-bedroom apartment on the first floor and a studio and a one-bedroom apartment on each of the upper three floors. As of 2005, the tenants were paying from $948 (Ruiz) to $1650 (Kurzina) in rent (Pet Ex. 1).

Mr. Weise filed five permit applications with the Department of Buildings between 1997 and 2004, seeking to obtain a new certificate of occupancy and convert the use of the building to class A apartments. In 1998, in conjunction with one of the applications, Mr Weise obtained from petitioner a certificate of no harassment (Pet. Ex. 16) for the period from December 1994 to 1998.

However, little was apparently accomplished with regard to obtaining a new certificate of occupancy, until February 22, 2005, when Mr. Weise filed another application with petitioner for a certificate of no harassment. A few months later, on May 17, 2005, he filed an alteration application with the DOB again seeking to obtain a new certificate of occupancy "for existing conditions – no work to be performed." On June 15, 2005, DOB issued a temporary certificate of occupancy amending the legal use as requested in the May 2005 alteration application.

After an investigation, on January 23, 2006, petitioner's deputy commissioner found reasonable cause to believe that harassment of tenants occurred at the premises during the three-year inquiry period. Respondent then sought a hearing before this tribunal to challenge that conclusion. Soon after the case was filed, the OATH case was taken off calendar when, on March 8, 2006, the Department of Buildings issued a new certificate of occupancy for the

premises for seven class A apartments. On April 1, 2008, the 2006 certificate of occupancy was revoked by the Board of Standards and Appeals on the grounds that no certificate of no harassment had been issued with regard to the 2005 alteration application on which the certificate of occupancy was based (Pet. Ex. 11).

In June 2008, the case was revived before this tribunal for a hearing on respondent's 2005 application.

Allegations of Harassment

The petition alleges 30 acts of harassment from February 22, 2002, to date, including failure to supply adequate heat, failure to supply adequate hot water, failure to maintain the boiler in working order, failure to repair a stove, telling tenants to move for repairs to be done, allowing excessive heat, failure to repair gutter, failure to abate mold, failure to abate water leaks, failure to repair wood floor in hall, failure to correct painted sprinkler heads in halls, failure to correct crack in building wall, failure to make timely or adequate repairs, failure to exterminate, failure to repair broken light fixtures, failure to repair the broken scuttle roof cover, failure to remove wooden cabinet obstructing roof access, failure to plaster and paint, failure to remove dead cat, failure to repair intercom, failure to repair door, failure to correct exposed electrical wires, failure to repair ventilator, failure to repair window, failure to replace missing outlets, failure to repair electrical switch, failure to replace missing light fixtures, failure to repair defective sink, and generally interrupting essential services and repairs. An amended petition, filed on September 17, 2008, added allegations of failure to repair a defective stove, telling tenants to move out, allowing excessive heat, and failure to repair a defective gutter.

Tenant Testimony

Petitioner's most persuasive proof of harassment consisted of the tenant testimony concerning lack of heat and hot water. Three tenants testified about the conditions in the building and they seemed to agree that the primary problem in 2002 through 2004 was lack of heat. Jacinto Ribas has lived in apartment 7 from 2000 through the present and is currently the only tenant remaining in the building. Mr. Ribas stated that the heat was "absolutely deficient" in 2002 through 2004 (Tr. 203). There was also often no hot water. Mr. Ribas recalled complaining to Mr. Weise about the occasional lack of hot water. Mr. Wiese would respond the

next day and say there was a problem with the boiler (Tr. 208). During the winter of 2006-07, the heat was much better (Tr. 204-05).

Carmelina Vargas lived with her two-year-old son in Apartment 2 from November 2004 through 2006. During her first winter in the apartment in 2004-05, she found the heat "inadequate" at night (Tr. 21-23). She stated that she would use the oven on her electric stove to heat her apartment. She left messages about the need for more heat with the superintendent Klaus Kurzina and with the landlord Mr. Weise, but no one responded (Tr. 22). Mr. Kurzina claimed he had no communication with the landlord because he was not being paid (Tr. 26-27). There were a total of ten occasions in 2005 when there was no heat at all (Tr. 26).

Gary Hanks testified by telephone that he lived in apartment 5 from 2002 until May 2008. He recalled that, from 2002 through 2007, the heat was "inadequate or nonexistent" (Tr. 135-36). Nonetheless, Mr. Hanks complained to his fellow tenants and to the super Michael Scott, but never to the landlord. He recalled making one 311 call about the lack of heat (Tr. 136-37).

In early 2005 the tenants organized and went on rent strike to protest the building conditions (Vargas: Tr. 43). On January 31, 2005, the tenants sent the landlord a letter (Pet. Ex. 31) announcing their decision to withhold rent due to the landlord's "refusing to do anything about the lack of heat during this past January" and also failing to address other tenant complaints. The tenants on strike were served with nonpayment actions (Vargas: Tr. 44; *see* Pet. Exs. 23, 24, 25, 26, 27; Resp. Ex. C), most of which resulted in monetary judgments in 2007 for unpaid rent.

Each of the tenants also complained about other conditions in the building and in their individual units. Mr. Ribas testified that there were leaks on the west wall around 2002 which resulted in mold forming in his apartment and in apartment 3. He believed that the leaks were caused by construction in the adjacent building. Mr. Ribas spoke to Mr. Weise "close to five" times about the leaks. He stated that the leaks persisted for nearly three years, when the owner finally replaced the roof (Tr. 199-202). He also observed "non-stop" leaks in the bathroom in unit 1, Mr. Kurzina's apartment (Tr. 218).

In approximately February 2006, while the tenants were on rent strike, the tenants started noticing bugs and foul odors coming through the vents. In March 2006 Mr. Ribas found the body of Mr. Reyes in apartment 6 (Ribas: Tr. 223). The bugs from the decaying body entered Ms. Ruiz's apartment through the vent, causing her to leave the building (Ribas: Tr. 225). After

the body was removed, the landlord did not clean up the food and a dead cat which remained in the apartment. Mr. Ribas called 311 to complain and was told that only the landlord had the right to enter the apartment and clean (Tr. 224). Mr. Ribas insisted that it took Mr. Weise three to four months to clean the apartment (Tr. 224).

Mr. Hanks also recalled the horrible smell permeating the building in the spring of 2006 and was forced to tape his vent to control it (Tr. 141). Ms. Vargas indicated that, due primarily to the problems with the dead body, she left the building in May or June 2006 (Tr. 44), although her uncle resided there until the end of the year (Tr. 77).

In the summer of 2007, the boiler began churning out unwanted heat through the radiators, making the apartments "an inferno" (Tr. 205). Mr. Weise did not respond to complaints about the problem (Tr. 206). Although Mr. Weise was never disrespectful, he did tell Mr. Ribas once that if he was not happy he could move (Tr. 203).

Mr. Ribas also complained about the landlord's failure to maintain a ladder and door to the roof as a fire egress (Tr. 212-13). He stated that the sprinkler system was not in working order (Tr. 212). However, he offered no indication that these complaints were ever relayed to the landlord, although it appeared that they were relayed to the Department, that the conditions were inspected, and a violation for failure to test the sprinkler system was issued on July 15, 2008 (Pet. Ex. 22).

Mr. Ribas's refrigerator stopped working and Mr. Ribas reported this to Mr. Weise. When no refrigerator was supplied, Mr. Ribas bought one himself (Tr. 229). Mr. Ribas also complained that the entrance door and the metal gate at the sidewalk had broken locks (Tr. 229). The intercom also did not work, forcing the tenants to go downstairs to let guests enter the building (Tr. 229-30). At some point the post office stopped delivering mail because the mailbox doors were broken (Tr. 235).

On April 4, 2005, Mr. Ribas wrote a letter (Pet. Ex. 19) to the landlord's attorney in which he complained about the inadequate fire exit and the untested sprinkler system. He also responded at length to the allegations that he was using his unit for a recording studio, insisting that he did not need the landlord's permission to possess musical instruments and that "no advertising or exchange of money in the purchase of actual goods occurs." Mr. Ribas admitted that, on October 4, 2006, he settled his legal action with the landlord and did not include requested repairs because his "mind wasn't into it" (Tr. 244).

Mr. Ribas insisted that, since he lived in the building, it had never "had an extermination" (Tr. 225), although he offered no indication an exterminator had ever been requested by himself or any other tenants. He stated that the landlord never painted his apartment, although he did so himself twice (Tr. 228).

Mr. Ribas indicated that he only made two 311 complaints about heat and hot water because he came from a "third world" country where such complaints were impossible (Tr. 268, 271). He acknowledged that he had not paid rent since January 2008 due to the landlord's failure to "resolve the outstanding problems" (Tr. 275).

Ms. Vargas also indicated that the front door lock was broken for one month and that the stair lighting was very poor, prompting her to turn on her cell phone to ascend the stairs at night (Tr. 27-28).

Ms. Vargas was aware of problems in other units. In apartment 1, Mr. Kurzina's apartment, she saw holes in his walls, a leak, and mold in his bathroom (Tr. 37-38). Mr. Bennett in apartment 3 complained about lack of heat and hot water (Tr. 39). In Ms. Ruiz's apartment, apartment 4, Ms. Vargas saw holes from birds pecking and leaving droppings on her ceiling (Tr. 39). Mr. Hanks in apartment 5 complained that his stove did not work (Tr. 42). Mr. Ribas complained about poor lighting and lack of heat (Tr. 43).

Ms. Vargas recalled that in 2005 the landlord put a vent above her stove and did some work to her bathroom (Tr. 70). Ms. Vargas admitted that, aside from the heat and lighting problems, the apartment was "pretty nice" (Tr. 76). Ms. Vargas acknowledged that the landlord brought nonpayment proceedings against her for some $15,500 in back rent. In December 2007 she entered into an agreement to repay this money in installments of $250 per month and had paid down approximately $1,200 of this debt (Tr. 50-51).

Mr. Hanks recalled that the gutter fell in February 2004 and was not repaired until September or October 2004 (Tr. 138). Leaks caused by the broken gutter caused mold in his bedroom, which was also repaired in October 2004 (Tr. 139). His stove was replaced in 2005 with a gas stove after some three years of complaining (Tr. 14). He recalled that, before the boiler was fixed in March 2006, it was going on unnecessarily in March or April and causing the apartments to be overheated (Tr. 142). He sacrificed his deposit of $4800 for the past due rent and moved out of the building in May 2008 to take a job in California (Tr. 143-44).

Many of the tenant complaints were also contained in the January 2005 rent strike letter (Pet. Ex. 31). The letter itemizes some 36 complaints, including general complaints of non-working intercom, unlocked gate, poor lighting, and mailbox problems. In addition, complaints were listed in six individual apartments, including broken fixture, falling plaster, no smoke detector, and falling tile in apartment 6; inadequate heat, non-working stove, no ceiling fan, no window locks, low water pressure, wobbly floor, and need for extra electrical outlets in apartment 2; inadequate heat, lack of ventilation, and rotting tile in apartment 3; inadequate heat and non-working stove in apartment 5; inadequate heat, bathroom ceiling leak, and pigeons in ceiling in apartment 4; and inadequate heat, lack of electricity, "abuse" due to construction workers accessing his apartment to make repairs, bathroom ceiling leak, broken wired enclosure, and lack of stove ventilation in apartment 1.

Inspections and Violations

After the application was filed, the premises were inspected four times by Department investigators. On July 12, 2005, Investigator Syed Ispahany inspected the building in the presence of Mr. Kurzina and wrote a memo (Pet. Ex. 12) recording his findings. He observed that Mr. Kurzina's unit had no electricity and had "ceiling leaks." The back yard fence was torn down. Ms. Ruiz in unit 4 complained about "sporadic heat." He spoke with several other tenants but made no record as to what they said.

Field Audit Supervisor Michael O'Connell testified that he inspected the building on December 28, 2006, pursuant to a complaint from Mr. Kurzina (Tr. 372). He issued seven violations for a broken floor on the second floor, painted sprinkler heads in four locations, and a structural crack on the east wall (Tr. 364-66; Pet. Ex. 7 at 12-13). All of these were evidently closed by February 13, 2007 (Tr. 375). Class C violations should be repaired within 24 hours, although reinspections usually occur only after seven to ten days (Tr. 380).

On May 23 and June 2, 2008, Investigator LaMont Headley inspected the building (Pet. Ex. 13). On his visits, he found only two tenants remained in the building. He observed that the SRO units had been removed and there was "construction" done on all of the floors. Investigator Headley had conversations with Mr. Hanks, Ms. Vargas, and Mr. Ribas. Mr. Hanks described a mold and mildew problem, which he admitted he never complained about to the landlord because the landlord "would not repair the problem the correct way." Investigator Headley confirmed the existence of the mold when he inspected and took photographs of the building on

May 23, 2008 (Tr. 330). Ms. Vargas described the smell caused by the dead body and also said she had problems with having no heat, no hot water, and two burners on her stove which did not work. Mr. Ribas said he was in court with Mr. Weise about mold in his unit and his request to have the stoves converted from electric to gas. Mr. Ribas also complained about delays in removing the dead body and a dead cat, which remained in the building for six months. Investigator Headley visited the building again on June 2, 2008, and took photographs of many of the conditions complained of by Mr. Ribas, including the intercom, the broken mailboxes, mold in the bathroom and closet, kitchen vent, and non-working bathroom vent (Tr. 331). Investigator Headley inspected the sprinkler system and saw nothing wrong with it (Tr. 350). He tested the intercom system and found it was not working (Tr. 354).

Respondent also called an inspector from the Department of Buildings who stated that after an inspection on May 18, 2005, plans examiners at the Department removed all objections on May 18, 2005, leading to the certificate of occupancy being issued in March 2006 (Tr. 386-88; Pet. Ex. 32).

Petitioner's proof included repeated violations and complaints concerning heat, hot water, mold, water leaks, broken plaster, and vermin. The Department records of open violations (Pet. Ex. 8) included four C violations from the inquiry period for failure to post contact with the key to the heating system (June 11, 2003), broken plaster in apartment 1 (Oct. 22, 2004), failure to provide ready access to the heating system (Jan. 21, 2005), and rats at front of building (Dec. 28, 2006). There were also some 24 closed C violations (Pet. Ex. 7), including violations for lack of heat (Jan. 29, 2003 – apartment 1; Jan. 21, 2005 – apartment 1); lack of hot water (Jan. 29, 2003 – apartment 1; Sept. 30, 2003 – apartment 1), lack of cold water (Jan. 29, 2003 – apartment 1), lead paint (June 16, 2003 – 5 locations in apartment 1), loose wash basin (June 25, 2003 – apartment 1), mold and mildew (Oct. 10, 2003 –apartment 1 bathroom), water leak (June 22, 2004 – apartment 3; Mar. 14, 2006 – apartment 1 bathroom; Apr. 4, 2006 – apartment 1 bathroom), broken wood floor (Dec. 28, 2006 – 2nd floor hall), painted sprinkler heads (Dec. 28, 2006 – throughout building hallways), and a structural crack (Dec. 28, 2006 – east wall 1st and 4th floors).

There were 23 open B violations during the inquiry period, including violations for broken plaster (June 1, 2003 – apartment 1 bathroom; Apr. 4, 2005 – apartment 1 bathroom), mice and roaches (Oct. 10, 2003 – apartment 1), defective window (July 31, 2004 – apartment

3), mold (Oct. 22, 2004 – apartment 1 bathroom), missing electrical receptacles (Jan. 4, 2005 – apartment 1 bedroom), broken light fixture (Jan. 4, 2005 – front of building), missing light fixture (Jan. 4, 2005 – apartment 1 bedroom; Feb. 10, 2005 – apartment 1 bedroom), broken intercom (Jan. 21, 2005 – apartment 1), broken door (Jan. 21, 2005 – apartment 1), exposed electrical wires (Feb. 10, 2005 – apartment 1 bedroom), broken electrical ventilation (Feb. 20, 2005 - apartment 3 kitchenette), no carbon monoxide detector (Mar. 28, 2005 – apartment 4), missing wood scuttle ladder (Apr. 5, 2005), broken wasteline (May 24, 2006 – apartment 1 bathroom), broken wash basin (June 1, 2006 – apartment 1 bathroom), broken scuttle roof cover (June 19, 2006), and obstruction to roof ladder (Feb. 6, 2007 – 4th floor).

Among the 17 B closed violations during the inquiry period were violations for loose wash basin (June 1, 2003; June 11, 2003; June 16, 2003; Sept. 22, 2003; Oct. 10, 2003 – apartment 1 bathroom), water leak (June 1, 2003 – apartment 1), broken plaster (June 1, 2003 – apartment 1; June 25, 2003 – apartment 1; June 22, 2004 – apartment 3), broken lock (Aug. 13, 2003 – apartment 1), broken refrigerator gasket (Sept. 20, 2003 – apartment 1), and inadequate lighting (Oct. 10, 2003 – entrance).

Citywide Chief Inspector Joseph Courtien testified as to various HPD actions with regard to the building. In late January 2003, HPD received numerous tenant complaints regarding a lack of heat. An HPD inspector issued a violation for failure to supply heat on January 29, 2003. When the owner did not turn the boiler back on after several days, HPD arranged for a contractor to restore the boiler by changing the oil nozzle and filter, adjusting the controls, and starting up the boiler (Tr. 91-92). HPD records indicate that contractor performed these tasks and requested a final inspection to authorize payment of $350 on February 13, 2003. The final inspection of the boiler was done on February 20, and payment to the contractor was authorized on March 4, 2003 (*see* Pet. Ex. 9).

According to Department records (Pet. Ex. 14), a violation was issued on January 21, 2005, for failure to supply heat to apartment 1. At around 4:45 p.m., the temperature in the apartment was 56 degrees, while the outside temperature was 18 degrees. The minimum required temperature for a residential apartment would be 68 degrees. Admin. Code §27-2029(a)(1).

Chief Inspector Courtien indicated that the Department contracted for additional repairs in March 2006, when an inspector found an active water leak in apartment 1. On June 30, 2006,

HPD authorized payment of $800 to a contractor to stop the leak and fix the bathroom ceiling and walls (*see* Pet. Ex. 10; Tr. 93-95).

Petitioner also presented records (Pet. Exs. 17 & 21) showing that, after a hearing in which the owner failed to appear, fines were issued for several of the violations. On November 16, 2005, a fine of $2,000 was issued for failure to maintain the sprinkler system and a fine of $1,000 was issued for failing to conduct a flow test of the system. On June 21, 2006, a fine of $1,000 was issued for failure to arrange a flow test of the sprinkler system and fines of $4,000 and $2,000 were issued for failure to maintain and post information about the sprinkler system (Pet. Exs. 18 & 21).

The many telephone complaints (Pet. Ex. 6) made from 2002 to 2008 show the following heat complaints: 1 in December 2002; 10 in January 2003; 3 in February 2003; 7 in April 2003; 4 in May 2003; 1 in September 2003; 4 in October 2003; 3 in June 2004; 4 in January 2005; 4 in February 2005; 1 in April 2005; 1 in December 2005; 2 in September 2006; and 1 in March 2007. There was one complaint in January 2003 about no water. The majority of the other telephone complaints were made by a tenant of unit 1 named David Hayardeni, who, in 2003, made 49 complaints about various conditions including water leaks, a broken sink, broken doors, a missing smoke detector, a hole in the wall, electrical problems, falling cabinets, a broken refrigerator, missing security buzzers for entrance door, and vermin.

Respondent's Evidence

Owner Martin Weise testified that his company owns some five or six buildings in Manhattan (Tr. 505). He purchased the building at 614 West 138th Street in July 1996 at a foreclosure sale. At that time, the building contained seven apartments, although the certificate of occupancy was for 11 SRO rooms with one bathroom on each of the four floors. There were no SRO tenants in residence. He recalled the roof damage caused by the collapse of an adjacent building in February 2004. Department of Buildings records (Resp. Ex. AAA) confirm that Mr. Weise complained in November 2003 when the gutter from the adjacent building fell and damaged the roof on 614 (Tr. 472). Mr. Weise insisted that repairs to the roof were completed by July 2004 (Tr. 404-05). Due to water damage at the rear of the building, he also replaced the sheetrock in units 3, 5, and 7 (Tr. 405). Building Superintendent Michael Scott, who has been the super at the premises since 1996 (Tr. 546), testified that the roof was replaced in 2002

pursuant to complaints from Mr. Ribas about a leak (Tr. 555). In 2004, the roof was replaced again after the owner of the adjacent building erected another floor, resulting in considerable damage around the parapet and chimney area at 614 West 138th Street (Tr. 556).

Mr. Weise described boiler problems in 2003 during unusually low temperatures. Due to the particularly cold weather, the oil supply company did not deliver in time and the boiler ran out of oil. Pipes throughout the building froze and split. He stated that he and his workers placed heaters in the tenants' apartments and worked round the clock to fix the system (Tr. 406). He installed a new boiler in June 2004 (Tr. 407).

Mr. Scott confirmed that, in 2003 when the boiler ran out of oil, there was no heat for two or three days while they waited for an oil delivery. Then, when the boiler was brought back on, there was ice in the pipes and many of the pipes burst with the surge of hot water. It took a plumber several days to repair the pipes so that heat could be restored (Tr. 559-61). He recalled Ms. Vargas complaining about insufficient heat. When Mr. Scott relayed these complaints to Mr. Weise, Mr. Weise advised him to turn up the boiler because he did not want any more heat complaints in the middle of the night (Tr. 562). He also recalled bleeding Mr. Kurzina's radiator after he complained about not having heat (Tr. 563). Mr. Scott also observed that Mr. Kurzina had things piled in front of the baseboards in the back room preventing the heat from being distributed properly (Tr. 567).

Mr. Weise insisted that he was "not aware" of any work done by HPD, as reflected in the emergency repair records. He conceded that a HPD contractor "may have come in on their own and done some work" (Tr. 483). He indicated that, after the fuel problem, he changed oil suppliers, as reflected by a February 3, 2003 invoice (Resp. Ex. BBB). He also locked the cellar door because he believed that Mr. Kurzina may have tampered with the boiler controls and fuel lines (Tr. 487).

Mr. Weise conceded that, although he indicated at one point that the frozen boiler caused "$20,000 worth of damage" (Tr. 508), he had no receipts to corroborate purchase of heaters in January 2003 for all of the tenants or for repairs of the heating system to remedy the burst pipes (Tr. 503, 505). When asked why he did not mention the incident in his application to HPD, which asked if there were any "major interruptions of services," he stated only that the problem "was dealt with immediately" and that he did not think it was a "major interruption" (Tr. 521-22).

Mr. Weise presented invoices and cancelled checks from 2004 for a variety of work at the building. He stated that he used the services of a contractor named Freddy Munoz, doing business as Teaco General Contracting, to do plumbing, construction, and repair work at various buildings which he owned (Tr. 431). In the summer of 2004, Mr. Munoz and his crew did painting and plumbing work at the building (Tr. 432-33). They also installed kitchen fans and replaced the boiler (Tr. 434, 438, 502) and repaired the back wall (Tr. 439). Mr. Scott confirmed that the boiler was replaced in 2004 (Tr. 556).

In corroboration of this testimony, he offered nine handwritten invoices with attached tables recording workers' hours and also Home Depot receipts:

Date	Amount	Type of Materials	Resp Ex Nos.
7/2/04	$98,200	Electrical, paint, plaster Kitchen fixtures Waste Removal	UU
7/24/04	8,622	Electrical, plumbing, Cleaning, gas cocks, Waste removal	VV
8/14/04	7,109	Plumbing, Crown molding	DD
8/27/04	6,142	Plumbing, paint	EE
9/03/04	6,478	Electrical, paint, Wood repair, Plumbing	GG
9/17/04	5,082	Paint	WW
10/04	2,503	Paint	FF
9/21/05	3,468	Gas installation Heating system	XX

Some of the Home Depot receipts bore the notation of 138th Street, while others bore the notation of "129," presumably a reference to the building at 145 W. 129th Street which Mr. Weise also owned. Nonetheless, Mr. Weise insisted that receipts marked "129" and the receipts with no notation were also for the 138th Street building because there was no work being done at any buildings other than 138th Street (Tr. 468). Later he stated that "99 per cent" of all of his repair expenses were to 614 West 138th Street (Tr. 526), even though he qualified this at another point by admitting "all properties are continuously being repaired" (Tr. 464).

Mr. Weise submitted checks showing various payments to Mr. Munoz (Resp. Exs. HH, II, KK, LL, MM, PP, QQ, SS). All of the checks submitted were written on bank accounts for other buildings at 145 W. 129th Street and at 503 W. 150th Street. Nevertheless, Mr. Weise stated

that he utilized these other accounts to pay for expenses at 614 West 138th Street because he had no money in the bank account for that building. These checks did not correspond with the invoice amounts. In addition he submitted a June 29, 2004 check for $2,670 to New York Consultants (Resp. Ex. JJ), a July 20, 2004 check for $2,400 to Bennett Plumbing (Resp. Ex. UU), a March 15, 2005 check to Albert Munoz for fabricating a new garbage rack (Resp. Ex. OO), a July 29, 2005 check for $6,000 to Bennett Plumbing (Resp. Ex. RR) for the sprinkler system, a September 7, 2005 check for $3,801 to Bennett Plumbing for connecting gas stoves (Tr. 448), a November 24, 2005 check for $5,434.77 to Bennett Plumbing (Resp. Ex. TT) for bathroom vents (Tr. 448-49).

Mr. Weise stated that he had no invoices for extermination services because the building superintendent performs this work (Tr. 544). Mr. Scott confirmed that he has performed extermination for the building since 1996 (Tr. 547). He indicated that neither Mr. Kurzina, Ms. Vargas, Mr. Bennett, Ms. Ruiz, Mr. Hanks, nor Mr. Ribas ever requested any extermination services (Tr. 548).

He recalled when most of the tenants stopped paying rent, but insisted that no complaints were made (Tr. 409). He stated that he continued to make repairs to their apartments despite their nonpayment (Tr. 409). Nonpayment actions commenced in February 2005 and terminated in 2006 and 2007 (Tr. 412). Mr. Weise insisted that the tenants' attorney, Mr. Dankburg, demanded $150,000 for each tenant in order to settle the cases (Tr. 414). Ms. Ruiz vacated her unit after making only one rent payment (Tr. 415). Mr. Bennett paid $7,000 in past due rent and moved out soon afterwards (Tr. 415). Under the settlement with Mr. Ribas (Resp. Ex. G), Mr. Ribas was forgiven eight months' rent and agreed to make installment payments of $500 per month toward the remainder of the unpaid rent (Tr. 418). When Mr. Ribas did not respond to the landlord's offer of a renewal lease, Mr. Weise initiated a holdover proceeding against him (Tr. 419). At the time of the hearing, Mr. Ribas had not paid rent for ten months (Tr. 420).

He stated that gas stoves were installed in September 2005 and April 2006, although Mr. Ribas's stove installation was delayed because Mr. Ribas would not provide access (Tr. 470). In fact, after permitting an inspection of his apartment in April 2008, Mr. Ribas has refused to provide the landlord any access to his apartment "until the court proceedings are completed" (Tr. 472). A hole was made in Mr. Ribas's wall to plumb the gas line (Tr. 470-71). He stated that he attempted to resolve Mr. Hanks's complaints about his electric stove by upgrading the circuit

breaker from 15 amps to 30 amps (Tr. 471). Ultimately he replaced the electric stove with a gas stove (Tr. 471).

Mr. Weise explained that, upon being informed in 2006 that Mr. Reyes's body had been recovered from apartment 6, Mr. Weise called his attorney for advice. At the time, the police had sealed the apartment pending an investigation and Mr. Weise did not have any access to the space. Ultimately, on July 28, 2006, Mr. Weise obtained a letter from the Public Administrator granting him access to the apartment. At that point he sent in a crew to remove debris and clean (Tr. 416). Mr. Scott also testified that he cleaned out Mr. Reyes's apartment after authorization to enter was received from the Public Administrator on approximately July 28, 2006 (Tr. 552; Resp. Ex. X). He and two other people spent a week cleaning and fumigating the apartment (Tr. 553).

As for his future plans for the building, Mr. Weise stated that he intended to "rent the building legally under rent stabilization, as it was rented before" (Tr. 539). Mr. Weise indicated that, except for Mr. Ribas, the building is vacant because, without a valid certificate of occupancy, the tenants might not be legally required to pay rent (Tr. 498-500).

Mr. Weise described various statements and actions by the tenants which he believed undermined their credibility. Mr. Weise described a conversation with Mr. Kurzina in January 2005 when Mr. Kurzina insisted that he should not have to pay rent for six months due to his cooperation in letting workers use his apartment to access the yard for repairing the roof. He threatened that he would "make your life miserable" if the rent was not forgiven (Tr. 408).

Mr. Weise insisted that Mr. Ribas first complained about mold after the holdover action was commenced in 2008 (Tr. 420). Mr. Ribas has refused Mr. Weise's repeated requests for access to inspect his unit for mold (Tr. 420). Mr. Ribas stated that no permission would be given until "after the court proceedings are over" (Tr. 420-21). Mr. Scott confirmed that, in August 2006, Mr. Ribas refused to let Mr. Scott into his apartment to remedy the mold problem (Tr. 554). Mr. Weise indicated that, on one return date in the holdover action, Mr. Ribas demanded $1 million to settle the competing claims for a holdover tenancy (Tr. 426). Mr. Ribas ultimately settled the nonpayment action on October 4, 2006 (Tr. 427). In January 2007, the Court ordered that HPD send an inspector. The HPD inspector found no violations (Tr. 429).

Mr. Weise also contended that someone was vandalizing the mailboxes just before the HPD inspections (Tr. 494).

Conclusions

In this case, the issue is whether petitioner's proof was sufficient to demonstrate that the various conditions in the building constituted harassment by the landlord. Harassment is defined by section 27-2093(a)(2) of the Administrative Code to be any conduct by or on behalf of an owner which interrupts "essential services" or otherwise "interferes with or disturbs or is intended to interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy" and "causes or is intended to cause such person . . . to vacate." Section 27-2093(b) creates a presumption that any statutory act defined in section 27-2093(a) shall be presumed to have been committed with an intent to cause a legal tenant to vacate the unit.

It is notable that this building, unlike the majority of buildings which are the subject of these hearings, does not contain SRO tenants, since the building is no longer configured as an SRO. Furthermore, unlike other buildings where the vacating of the building was found to support a finding that the landlord had intended to force the tenants to leave, the tenant departures here seem equivocal. Most of the tenants left after the landlord obtained judgments against them for failure to pay very large amounts of rent: $12,825 for Mr. Bennett in apartment 3 (Pet. Ex. 27), $32,950 for Mr. Kurzina in apartment 1 (Resp. Ex. CC), $13,833 for Ms. Ruiz in apartment 4 (Resp. Ex. BB), and $15,750 for Ms. Vargas in apartment 2 (Resp. Ex. C). Mr. Hanks testified that he left, not because of the building conditions, but due to a job transfer.

In his testimony, Mr. Weise denied having any motive to force the tenants to leave, insisting that his only desire was to legalize the existing apartments and continue to rent them to rent-regulated tenants. He insisted that the only reason for the multiple vacancies was concern that tenants might successfully avoid paying rent due to the lack of a valid certificate of occupancy. On the other hand, Mr. Ribas voiced his view that Mr. Weise wanted to convert the building to condominium apartments, as other landlords in the neighborhood had done (Tr. 278). I could not credit Mr. Weise's explanation of why he was leaving most of the building vacant.

His testimony as to his inability to force new tenants to pay was inconsistent with his very successful litigation record, showing that he obtained judgments against all of the tenants for unpaid rent, even though the tenants were represented by an attorney. The evidence therefore supported a finding that Mr. Weise's future plans for the building probably did not include

maintaining rent-regulated apartments and that he had a financial incentive to encourage the existing rent-regulated tenants to vacate.

In general, petitioner's proof of harassment focused upon the owner's failure to supply essential services rather than upon other more direct actions against the tenants. The only exception is Mr. Weise's remark that Mr. Ribas could move if he did not like living in the building. Even assuming that Mr. Weise made this remark, the comment standing alone was not coercive and did not constitute harassment. It was certainly clear that Mr. Ribas, who acknowledged that Mr. Weise was always respectful, did not perceive the remark as a threat. Mr. Ribas also offered no time reference as to when this remark was made, leaving open the possibility that it could have been made before the inquiry period. For these reasons, the remark about Mr. Ribas moving did not prove harassment.

The remainder of petitioner's proof rests upon the contention that the tenants were deprived of essential services. The most serious conditions in the building, according to the proof, concerned the failure to supply adequate heat and hot water, failure to repair leaks, and failure to abate mold. As to these problems, the tenants' testimony was corroborated by a variety of other evidence. In fact, the owner conceded that there was no heat for an extended period of time in early 2003 when the boiler ran out of heating oil, causing the heat supply pipes to freeze and then burst when the boiler started up again. However, I generally credited the uncontradicted testimony of Mr. Weise and Mr. Scott as to the initial cause of the boiler failure in 2003 and the damage caused to the system when the boiler was brought back on.

The evidence that the 2003 heat outage went on long enough to cause the Department staff to order and pay for an oil filter in February 2003 confirms that no heat was supplied for an extended time. Yet the fact that emergency repairs were done to the boiler is consistent with respondent's evidence that restoration of heat required extensive work to fully repair. In fact, I credited the testimony of Mr. Weise and Mr. Scott that restoration of heat to the apartments required considerable time and expense, far beyond the $350 paid by the Department. In particular, Mr. Weise's profound indignation at the suggestion that the Department's emergency repair was adequate to restore the heating system seemed entirely sincere. Thus, for the boiler shutdown which occurred in early 2003, I find that the problem was addressed by the owner within a reasonable time and that the owner's actions did not constitute harassment.

By law, the landlord's obligation to supply heat exists only for the heating season from October 1 to May 1 of each year and is limited to times when the outside temperature is below 55 degrees. At these times the inside building temperature must be maintained at a minimum of 68 degrees during the day and at a minimum of 55 degrees at night. Multiple Dwelling Law § 79 (Lexis 2009); Administrative Code § 27-2029 (Lexis 2009). The proof offered here did not establish that the landlord failed to meet its obligation to supply heat.

The tenants' recollections of the heat problems during 2004 and 2005 were vague and inconsistent as to how pervasive and severe the lack of heat was. Ms. Vargas stated that, in 2004-2005, the heat was "inadequate" at night, prompting her to turn on her electric stove. She estimated that there was no heat at all on ten occasions in 2005 and stated that Mr. Weise did not respond to her telephone complaints. Mr. Ribas testified also that the heat was "absolutely deficient" from 2002 through 2004, although he stated that Mr. Weise responded to his complaints the following day. Mr. Ribas also stated that the heat improved in 2006. Mr. Hanks stated that the heat was "inadequate or nonexistent" from 2002 all the way until 2007. The corroboration for their testimony about this period consisted of a single closed heat violation for apartment 1, issued on January 21, 2005, when the outside temperature was 18 degrees and the inside temperature was 56 degrees (Pet. Ex. 14); four 311 heat complaints made in January 2005; and four heat complaints made in February 2005.

Beginning in January 2005, the tenants went on rent strike and used various conditions in the building as defenses to nonpayment actions filed by the owner. The collective motive to reduce their obligation to pay rent made their subjective assessments of "inadequate" heat particularly unreliable.

On the other hand, Mr. Weise's attempts to place the blame for the subsequent heat problems on Mr. Kurzina, contending that he was tampering with the boiler, were not convincing for a number of reasons. Mr. Weise himself admitted that the primary cause of a heat disruption was the boiler running out of heating oil. Moreover, respondent offered no reason for Mr. Kurzina to deliberately turn the boiler off or down, since such actions would result in Mr. Kurzina also suffering the loss of heat.

The owner's evidence demonstrated that, after the problems in 2003, considerable work was done to improve the heating system. The owner found a new oil supplier. The boiler was replaced in June 2004. While the invoices and checks submitted do not make clear the exact cost

of the new boiler, they do show that, in the summer of 2004, the owner paid at least $39,000 on various repairs and improvements for the building. This evidence makes it clear that, even assuming that problems with the heat continued in 2004 and 2005, the owner was attempting to address the problem and, in fact, had done so by the winter of 2005 through 2006. There is thus little basis to make a finding that the owner's delay in fixing the boiler constituted harassment. *See Dep't of Housing Preservation & Development v. Haddad,* OATH Index No. 1312/07, at 20 (Aug. 9, 2007) (tenant testimony pertaining to, *inter alia*, elevator and boiler break-downs found insufficient to establish harassment where landlord rebutted the presumption of harassment through evidence of efforts to remedy conditions).

In a similar manner, the tenants indicated that there were water leaks or mold in apartments 1, 3, 5, and 7, while the owner offered proof of repeated efforts to fix both the roof as well as the damages caused by the leaks. Mr. Hanks recalled that the gutter broke in February 2004 and that the roof was not fully repaired until September or October 2004 (Tr. 139), a fact confirmed by Mr. Weise.

The worst leaks seem to have been in apartment 1. Ms. Vargas saw leaks and mold in apartment 1 around 2005 and Mr. Ribas also recalled "non-stop" leaks there. The Department inspectors saw leaks in July 2005 and in March 2006, and, in June 2006, the Department paid $800 to stop and repair a bathroom leak in apartment 1. There were also two closed violations in March and April 2006 for leaks in apartment 1 and a closed violation in October 2003 for mold.

The fact that the 2006 leaks in apartment 1 resulted in emergency Department repairs suggests that this condition was not repaired promptly. According to Mr. Courtien, such emergency repairs are only done for C violations which are not certified as corrected within a few days. In this case, the complaint from Mr. Kurzina was received on March 13, 2006, and a violation for the leak was then issued on April 4, 2006 (Pet. Exs. 7 & 10). The repair was then done around the beginning of May 2006, some 30 days after the violation had been issued and served on the owner.

Mr. Ribas complained of leaks in the wall of apartment 7 in 2002, which he mentioned as many as five times to Mr. Weise. The leaks persisted until 2005, when Mr. Weise repaired the roof and stopped them.

The leaks in the other two apartments were far less serious and may never have been reported by the tenants. Mr. Ribas spoke generally of seeing leaks in 2002 in apartment 3,

without mentioning whether any complaints were made to the landlord. There was a closed violation from June 2004 for a water leak in apartment 3. As to the related mold issue, Mr. Hanks stated that his bedroom in apartment 5 had mold from leaks which was repaired in October 2004. Mr. Hanks admitted that he did not bother to tell Mr. Weise about mold in his bedroom because "my complaints would fall on deaf ears" (Tr. 152), and admitted as much to Investigator Headley.

Mr. Weise supplied very little evidence to explain his delay in responding to the leaks in apartment 1 in 2006. However, he did indicate that Mr. Kurzina was angry and generally uncooperative. The Department records confirm that inspectors were unable to gain access to apartment 1 to confirm that the repair had been completed. In addition, at around the time this complaint was made, the tenants were defending the owner's nonpayment actions in Housing Court. The legal papers make clear that the tenants were seeking to reduce the amount of rent found to be owed by establishing that the conditions in the building were very bad and thus had a financial incentive to exaggerate the seriousness of problems. There was no evidence as to whether Mr. Kurzina himself ever complained of the 2006 leak promptly to Mr. Weise and little indication of the severity or extent of the leak damage.

The testimony of Mr. Weise and Mr. Scott, corroborated by invoices and cancelled checks, demonstrated that considerable repair work was done in the building in 2004 and 2005. It is clear that some of this work was to address the leaks in the individual units, a fact confirmed by both Mr. Ribas and Mr. Hanks. Mr. Hanks also indicated that some of the leaks were caused in February 2004 by workers from the adjoining building. Although Mr. Weise's somewhat disorganized records made it impossible to isolate the exact cost of these repairs, it would appear that they were reflected in the consultant bills from 2004 and were likely several thousand dollars. It was also undisputed that the leaks in apartment 1 were repaired within 30 days. The evidence that some of the leaks were due to unforeseeable roof damage inflicted by construction on an adjacent building, that some of the tenants did not report the conditions to the landlord, that at least the leaks in apartment 1 were remedied in a reasonable amount of time, and that extensive repair work was done by the landlord all weigh against finding that the landlord neglected to repair the leaks or that his response should be held to be harassment.

As to most of the remainder of the other allegations of unrepaired conditions, there was either no evidence that the owner was notified of the condition, either by the tenants or pursuant

to a violation, or no evidence that the owner delayed for an unreasonable amount of time in remedying it. Thus, the problem with the wooden floor in the hall was not mentioned by any of the tenants and is referenced only as a closed violation, issued on September 28, 2006, and repaired within approximately three weeks on January 18, 2007. The painted sprinkler heads was the subject of a violation also issued on December 28, 2006, and repaired on February 13, 2007. The crack in the exterior wall resulted in a violation issued on December 28, 2006, and was repaired by January 29, 2007.

As to problems with vermin in general, the only evidence was the December 28, 2006 violation for rats at the front of the building, a violation for mice and roaches issued in October 2003, and general vermin complaints by a tenant named Hayardeni in 2003. Notably, none of the three tenants mentioned a rat problem in their testimony. Nor did the January 2005 rent strike letter mention a general problem with vermin or complain of the owner's failure to exterminate, even though the letter catalogued dozens of other complaints which supposedly prompted the tenants to go on rent strike. Mr. Hayardeni's 311 complaints of a vermin problem also establish little in the way of demonstrating the extent of the problem or a refusal by the landlord to exterminate. This evidence fell short of establishing harassment.

The tenants' credible testimony established that the odors and vermin emanating from apartment 6 prior to the discovery of Mr. Reyes's body in February and March 2006 must have been horrendous. However, there was little basis to conclude that the delay in either the discovery of the body or in fumigating the apartment was due to negligence on the part of the owner. None of the tenants were clear on exactly how many days elapsed between their first reports of the odors and the discovery of the body. The owner produced credible proof that, upon discovery of the body, the police designated the apartment as a possible crime scene and prohibited the owner access until a court order was obtained. Even though the condition must have made it extremely difficult to live in the building, there was little indication that condition was caused by or prolonged by the owner.

I harbored doubts that the access to the roof, complained of vehemently by Mr. Ribas, constituted an unsafe condition as alleged. The violation for "obstruction to roof ladder," issued in February 2007, was not explained. The June 2006 violation for a "broken scuttle roof cover" was also not explained and may have been partially negated by a Department of Buildings inspection in March 2005, which found no violation due to lack of access to the roof (Resp. Ex.

R). Mr. Ribas's views notwithstanding, these conditions, assuming they existed, did not appear to be essential services such that the landlord's delays in addressing them constituted intentional harassment.

Although Ms. Vargas testified about inadequate hallway lighting, Mr. Hanks did not mention this as a problem and Mr. Ribas mentioned in passing that he complained of "poor lighting." Ms. Vargas did not indicate that she ever complained about this condition to the landlord. One violation concerning inadequate lighting was issued in October 2003, and closed some time before October 2004. The other violation was issued on January 4, 2005, and remained open as of the time of the hearing.

Delays in repairing plaster were not mentioned by Ms. Vargas, Mr. Hanks, or Mr. Ribas as to their apartments. However, plaster repair was the subject of complaints in the January 2005 rent strike letter, Ms. Vargas described seeing peeling plaster in apartment 1, and violations for broken plaster issued for apartment 1 on June 1, 2003, were closed due to landlord compliance on August 29, 2003. This evidence does not warrant a finding of harassment.

The evidence as to whether the tenants had a working intercom was inconsistent. None of the tenants mentioned this as a problem, although it was listed as one of the tenant complaints in the January 2005 rent strike letter. There was also a violation issued on January 21, 2005, for a broken intercom for apartment 1.

Ms. Vargas testified to problems with the front door, which she said lasted for about a month. However, this was not identified as a problem in the testimony of the other tenants or in the January 2005 rent strike letter. Although there are violations for the apartment 1 door, no violations were issued for the front door. This evidence is insufficient to sustain a finding of harassment.

For several of the conditions, the only proof offered consisted of violations. Violations for exposed electrical wires, lack of ventilation fans, missing outlets and broken light fixtures, and defective sinks were issued in 2005 and 2006. None of the tenants testified as to these problems. Only a broken light fixture in apartment 6 was referred to in the rent strike letter. I find that this evidence was also inadequate to establish harassment.

There was testimony from Mr. Ribas about excessive heat due to a malfunction in the boiler in the entire summer of 2007 (Tr. 205-06). In fact, Mr. Ribas insisted that the temperature in his apartment must have been "a hundred degrees or something like that," although he

admitted he had never actually measured it. Mr. Hanks also indicated that the owner continued to supply heat in March after the heating season ended, causing Mr. Hanks to run his air conditioner. But Mr. Hanks indicated that, by April, the heat was turned off (Tr. 142). I credited Mr. Hanks's testimony over that of Mr. Ribas as to the relatively brief period during which the boiler malfunction persisted. Furthermore, given Mr. Ribas's tendency to exaggerate the building conditions, I did not find his estimate of the 100-degree temperature reliable. I also found it unlikely that the owner would deliberately or maliciously spend extra money to overheat the building for an extended period of time and would likely have fixed the boiler as soon as he was notified to avoid unnecessary expense. The evidence of excessive heat in March 2006 was thus inadequate to sustain a finding of harassment as to excessive heat.

The final allegation concerns the failure to fix Mr. Hanks's stove. Mr. Hanks testified that his stove never worked properly and, in fact, would not get hot enough to boil water or fry an egg (Tr. 138). He complained repeatedly to Mr. Weise and, in 2006, the electric stove was replaced with a gas stove (Tr. 149). In reply, Mr. Weise insisted the electric stove was simply slower than Mr. Hanks was accustomed to. He also indicated that he increased the amperage and replaced the wiring to try to improve the performance of Mr. Hanks's stove (Tr. 471). Mr. Scott confirmed that he ran new wire and added a circuit breaker in an effort to address various tenants' complaints about their stoves (Tr. 551).

Of all the tenant complaints, I found the failure to supply Mr. Hanks with a working stove to be the most disturbing. Unlike Mr. Ribas, Mr. Hanks did not appear prone to exaggeration and I fully credited his testimony that he was without a fully functional stove from 2002, when he moved in, until 2006, when the landlord installed new gas stoves in all the apartments. It was also undisputed that Mr. Hanks complained several times directly to Mr. Weise. On the other hand, I also credited the testimony of Mr. Weise and Mr. Scott that the landlord made efforts to remedy the problem by upgrading the electrical wiring and circuitry and ultimately resolved the issue by installing gas lines in the building in 2006, at which time Mr. Hanks and the other tenants were provided with new gas stoves. Ultimately, I found that the landlord's decision to first address the stove problem by improving the wiring was reasonable but did not excuse the four-year delay in finally fixing the problem.

Ultimately, however, I find that the stove in Mr. Hanks's unit was not an "essential service" within the meaning of section 27-2093(a)(2). First of all, it is clear that this provision

was intended to apply only to "single room occupancy multiple dwellings." While cooking in an SRO unit is permitted so long as the unit contains a kitchen and does not require a "movable cooking apparatus," Multiple Dwelling Law § 248 (9) (Lexis 2009), I am unaware of any authority for holding that working stoves are legally required for SROs generally. An expired law prohibited landlords from removing "kitchens" from any SRO, Administrative Code § 27-198.2 (a),[1] but there appears to be no current prohibition in removing either appliances or a kitchen from an SRO unit or conversely requiring that they be installed. Moreover, Mr. Hanks testified that his stove did not work when he took possession of the unit in 2002, so, at least as to him, no service was actually taken away or diminished. Nor was any proof offered that Mr. Hanks's lease mandated a working stove. For these reasons, the stove in Mr. Hanks's unit was not an "essential service" and it would therefore be inappropriate to presume an illegal intent from the landlord's failure to repair the stove promptly. I do not find that the record in this case, including the evidence that the owner made attempts to repair the stove problem by improving the wiring and the proof that the tenants engaged in an extended rent strike restricting the landlord's income, supports a finding that the delay in repairing Mr. Hanks's stove was intended to harass him or force him to vacate his unit.

In sum, the evidence showed that there were significant problems with the owner's overall maintenance of the boiler, the roof, and the tenants' stoves and that these problems resulted in service disruptions. The evidence also showed that the owner made efforts to address these problems and restore services. While some of the owner's repairs were delayed by as much as a year or more, some of this delay was attributable to the difficulty of properly evaluating and financing the more complicated repairs to the boiler and to the roof. Repairs to the individual tenants' apartments were also delayed by a failure of the tenants to request repairs or to cooperate in providing access to complete the repairs. On this record, the proof provides an insufficient basis to find that the delays in repairing any of the conditions complained of by the tenants constituted harassment.

[1] According to the notes to the Administrative Code, this provision expired on March 5, 1992. Administrative Code § 27-198.2 (Lexis 2009).

I therefore recommend that no harassment be found and that the owner's application for a certificate of no harassment be granted.

John B. Spooner
Administrative Law Judge

January 12, 2009

SUBMITTED TO:

SHAUN DONOVAN
Commissioner

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