FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
CIVIL TRIAL DIVISION

DAMIAN GOLDSTEIN,	:	
	:	
Plaintiff	:	NOVEMBER TERM 2010
	:	NO. 3964
v.	:	
	:	
STEPHEN WEINER AND	:	
MARJORIE WEINER,	:	
	:	
Defendants.		

OPINION

SHUTER, J.

Kenneth Baritz, Esquire - Attorney for Plaintiff
David Denenberg, Esquire – Attorney for Defendants

December 14, 2011

Goldstein Vs Weiner Etal-WSFFP

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I. Procedural Background

This matter was initiated by a *de novo* appeal from a landlord/tenant judgment entered on November 23, 2010 in the Philadelphia Municipal Court. Trial was scheduled in this case for March 28, 2011. On March 7, 2001 the defendants herein, Stephen and Marjorie Weiner (the "Defendants"), filed a Motion for Summary Judgment (the "Motion"). The response date assigned to the Motion was April 7, 2011. The plaintiff in these proceedings, Damian Goldman (the "Plaintiff"), filed an Answer in Opposition of Motion for Summary Judgment (the "Answer") on Friday, March 25, 2011, three days before trial.

On Monday, March 28, 2011, the parties appeared before this Court for trial. At that time, the Motion had not yet been assigned to a judge for disposition and, therefore, had not been ruled upon. Because the parties were all present and prepared to proceed, the trial went forward, effectively rendering the Motion moot. The Motion, Answer and memoranda of law, however, contain the parties' arguments on the legal issues raised in these proceedings. As a result, they were submitted to this Court prior to trial and are being considered in conjunction with the evidence adduced at trial. Each of the parties has also submitted a supplemental memorandum of law to address the constitutional issues raised by Plaintiff in his Answer.

II. Findings of Fact

On May 24, 2006, the Plaintiff and the Defendants entered into a written lease (the "Lease") for the premises located at 262 Renoff Street in Philadelphia (the "Premises"). [N.T. p. 3; 12-15] Plaintiff was the landlord under the Lease and the Defendants were the tenants. Pursuant to the terms of the Lease, the Defendants were to pay rent to the Plaintiff in the amount of $650 per month. Late fees of $65 were to be added in the event that rent was not paid by the 5th day of

each month. [N.T. p. 3; 17-20]. The Lease also entitled the landlord to attorney's fees in the event of a breach by the tenants. [N.T. p. 3; 15-16]. Plaintiff incurred $3,100 in attorney's fees in connection with these proceedings, which he has already paid to his attorney. [N.T. p. 7; 18-24].

The Lease was for a period of one year and renewed yearly thereafter unless terminated by either party in accordance with the terms of the Lease. At the outset of the tenancy, the Defendants gave the Plaintiff a security deposit of $650, as well as last months' rent of $650. [N.T. p. 4; 1-3] The Defendants resided at the Premises from June 1, 2006 through May 31, 2011. The Defendants paid all rent due under the Lease, although somewhat sporadically, from the beginning of the Lease term through September of 2009. [N.T. p. 13; 17-23]. No rent was paid from October 1, 2009 through May 31, 2010 when Defendants vacated the Premises and returned the keys to Plaintiff. [N.T. p. 5; 4-8].

On May 19, 2010, the Plaintiff filed a Landlord/Tenant Complaint in the Philadelphia Municipal Court to recover possession of the Premises due to non-payment of rent in the amount of $5,720 (the "LT Complaint"). [N.T. p. 3; 21-24]. As required by both §102.7.1 of the Philadelphia Property Maintenance PMC (the "PMC") and Rule 109 of the Municipal Court Rules of Civil Procedure, the Plaintiff attached a Housing Inspection License for the Premises dated May 19, 2010 (the "Housing License") to the LT Complaint. That Housing License was obtained by the Plaintiff from the Philadelphia Department of Licenses and Inspections ("L&I") the same day on which the LT Complaint was filed. [N.T. p. 15;1-24]. On May 31, 2010, subsequent to the filing of the LT Complaint, but prior to trial, the Defendants voluntarily vacated the Premises and returned the keys to the Plaintiff. [N.T. p. 16; 2-6]. Afrter trial in Municipal Court, a judgment was entered in favor of Plaintiff in the amount of $5,873.16 for unpaid rent and court costs. Because the Defendants vacated the Premises prior to trial in the

License same day as complaint

Municipal Court, possession of the Premises was not an issue in those proceedings and, for that same reason, is not an issue in these proceedings.

The instant *de novo* appeal followed. At issue is the Plaintiff's entitlement to collect rent for the period from October 1, 2009 through May 31, 2010. The Defendants assert that pursuant to the PMC, the Plaintiff is barred from receiving rent for the period during which the Plaintiff failed to possess a Housing License for the Premises. The Defendants, however, concede that the Plaintiff is entitled to be paid rent for the period between the date that the Plaintiff obtained the Housing License, May 19, 2010, and the date the Defendants vacated, May 31, 2010. Defendants further concede that Plaintiff is entitled to be reimbursed for his legal fees of $3,100 in accordance with the Lease. [N.T. p. 18;7- p.19; 25 and p.32; 11-17]

III. DISCUSSION

The Defendants argue that the PMC specifically prohibits the Plaintiff from collecting rent for the entire period during which the Plaintiff failed to maintain a Housing License for the Premises. The Plaintiff, on the other hand, opines that the legislative intent behind the PMC was to simply require landlords to provide a current address at which they may be served with notice of any property violation by L&I.[1] He argues that the PMC was never intended to allow tenants to use its provisions as a defense in a civil action to collect the rent. Finally, Plaintiff argues that the portions of the PMC at issue in this case both cause a taking of his property without due process of law and create an unconstitutional interference with his private contractual rights.

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[1] **PM-102.5.1** requires Housing License applications to identify the rental property by address. **PM-102.5.2** requires Housing License applications to identify the property owner's name and address, to indicate if the owner is a corporation and, if so, to provide the corporate address and the name and address or at least one principal. **PM-1026.3** requires an owner to notify the L&I of any changes in address, ownership or corporate officers within 5 days. **PM-102.6.5** requires a property owner to designate a property manager who L&I can require to take any action necessary to protect the public health safety and welfare.

A. The Philadelphia Property Maintenance Code

Section 102.6.4 of the PMC provides as follows:

> **PM-102.6.4 Rent Collection:** *No person shall collect rent with respect to any property that is required to be licensed pursuant to this code unless a valid license has been issued for said property.* At the inception of each tenancy, an owner shall provide to the tenant a Certificate of Rental Suitability issued by the Department no more than sixty (60) days prior to the inception of the tenancy along with a copy of the owner's attestation to the suitability of the dwelling unit as received by the department and a copy of the "City of Philadelphia Partners for Good Housing Handbook" issued by the Department and any succeeding documents.

PM-102.6.4 [emphasis added].

Similarly, Section 102.7.1 of the PMC provides as follows:

> **PM-102.7.1 Non-compliance:** Any owner who is required to file a license application under this code or who fails to comply with the provisions of Section PM-102.0 as required, or whose license has been suspended or revoked under subsection PM-102.7.2 shall be denied the right to recover possession of the premises *or to collect rent during or for the period of non-compliance* or during or for the period of license suspension or revocation. In any action to recover possession of real property or to make any claim against a tenant, the owner shall attach a copy of the license together with any amendments thereto.

PM-102.7.1 [emphasis added].

The clear and express language of §§102.6.4 and 102.7.1 of the PMC unequivocally provides that no landlord may collect rent while he or she does not possess a Housing License, or for the period during which the landlord failed to maintain such a license. As a result, there is no doubt that pursuant to the express terms of the PMC, the Defendants have no obligation to pay rent from the inception of the Lease through May 19, 2010. Thus, unless it is shown that courts have refused to enforce the PMC or similar laws with like provisions, or have constitutionally invalidated the same, the failure of

Plaintiff to obtain the Housing License prior to May 19, 2010 serves as a complete defense to Plaintiff's claim for rent accrued prior to May 19, 2010. For the reasons set forth below, this Court agrees with the Defendants' reading and application of the PMC, finds that the PMC is enforceable and finds that the PMC does not violate the provisions of either the United States Constitution or the Pennsylvania Constitution. As a result, the Plaintiff cannot collect rent for the period during which he did not have a valid Housing License.

B. Application of the PMC and Similar Licensure Laws by the Courts.

Neither this Court, nor the parties have uncovered any relevant cases specifically addressing the issue of whether §§102.6.4 and 102.7.1 of the PMC provide tenants with a defense to a claim for non-payment of rent, and it appears that no such cases exist. The parties did, however, provide this Court with an unpublished opinion authored by the Honorable Alan K. Silberstein in 1989 in the case of *Gloria Carter v. Vivian Sheldon*[2]. A true and correct copy of the opinion is attached hereto as Exhibit "A". While that case involved a different factual and procedural situation than the instant case, its analysis and reasoning are helpful to the resolution of the present case.

In *Carter v. Sheldon*, the plaintiff, Gloria Carter, had been the tenant under a residential lease and the defendant, Vivian Sheldon, was her landlord. Carter had paid all of the rent due under the lease and moved out at the termination of the lease term. Thereafter, she discovered that for four of the months that she had been a tenant and had dutifully paid her rent, Sheldon had failed possess a residential rental property license pursuant to §§7-504(5) and 7-505(1) of the

[2] The *Carter v. Sheldon* case has been archived and this Court was unable to retrieve any record of that case, including the Municipal Court case number or docket. It appears that the only remaining copy of the entire case is the reprinted version of the opinion from the *Legal Intelligencer* attached hereto as Exhibit "A", which was found by the parties and presented to this Court in the form of a partially illegible photo copy. This Court was able to read the case in its entirety by extrapolating the missing words from the surrounding context.

Philadelphia Code, which are the predecessors to §§102.6.4 and 102.7.1 of the PMC. Both §§7-504(5) and 7-505(1) contain similar language barring landlords from collecting rent for any period during which an owner of a rental property did not have a residential rental property license. As a result, Carter sued Sheldon in Municipal Court to recover $1,200 in rent that she paid to Sheldon during the period that the property was unlicensed.

Judge Silberstein found that "[a]lthough the above-referenced ordinances penalize a landlord by not allowing him or her to collect rent for the period of non-compliance, the Philadelphia Code does not address the [then] instant situation of whether the landlord must return any rental payment received while in violation of the licensing provisions." *Carter v. Sheldon* at¶ 4. The Court noted that "even though the landlord was not technically allowed to collect rent for this period [that she was unlicensed], she did in fact receive rental payments". *Id.* at¶ 5.

In finding in favor of Sheldon, the defendant/ landlord, the court held that the rental license law "*prevents an unlicensed landlord from bringing an action for back rent against a tenant*, but it makes no mention of any rights that a tenant has for back rent already paid to an unlicensed landlord". *Id* . at ¶ 9 [emphasis added]. The court further found that because the payments were voluntarily made by the tenant and that the landlord had given the tenant the benefit of her bargain, there was no basis under either contract or equity principles to order the landlord to disgorge the payments.

In reaching its decision, the court in *Carter v. Sheldon*, noting that there were no Pennsylvania cases that had addressed the issues before the court, relied upon the persuasive reasoning set forth in the cases of *Comet Theater Enterprises v. Cartwright*, 195 F. 2d 80 (9th Cir. 1982) and *Food Management, Inc. v, . Blue Ribbon Beef Pack Inc.*, 413 F.2d 716 (8th Cir. 1969). In *Comet Theater*, the Ninth Circuit was asked to determine whether an unlicensed

contractor was required to disgorge monies it had been paid for services rendered in the construction of a drive-in theater in California. The property owner sought to recover all monies paid to the contractor on the basis that the contract between the parties was illegal because of the contractor's failure to obtain a license required by the California Business and Professions PMC. The court stated that in California, "a contract made by an unlicensed contractor is illegal and void." *Comet Theater*, 195 F. 2d at 81. The court observed, however, that there was no provision in the licensing statute that allowed persons who benefitted from full performance of a contract by an unlicensed contractor to recover the consideration voluntarily paid to the unlicensed contractor. Nor did the court believe that the public policy underlying the licensing act was effectuated by allowing the property owner to recover back monies voluntarily paid in return for benefits it received. The court found that the property owner "voluntarily paid the consideration for what it received acting under a mistake of fact of its legal rights" under the licensing statute instead of exercising its right "to refuse payment and to set up [the applicable] section [of the licensing statute] as a *perfect defense to any action brought by the defendants*." *Id.* at 81-82 [emphasis added]. Because the *Comet Theater* case involved an illegal transaction that was consummated voluntarily based on a mistake of law, the defendant/contractor was not required to disgorge the monies received.

Similarly, the *Food Management* case concerned a dispute over a contract involving the construction of a meat packing plant in Iowa. The plaintiff was hired by the defendant to design and oversee the construction of the plant. Under the contract at issue, the plaintiff was to provide the defendant with, *inter alia*, architectural and engineering services on the project. After a dispute between the parties arose under the contract, the defendant refused to pay the plaintiff the balance owed under the contract. After the plaintiff sued the defendant to pay for the balance of

its services, the defendant counterclaimed for monies it had paid under the contract because it turned out that the plaintiff was not licensed to perform architectural or engineering services in the State of Iowa.

In its opinion, the Eighth Circuit quoted the trial court's unpublished opinion concerning the legal consequences of the plaintiff's failure to be properly licensed. The trial court stated:

> 'The general rule is that a contract made in the course of a business or occupation for which a license is required by one who has not obtained a license is unenforceable either where the statute expressly provides, or in the absence of an express provision, where the statute is a police power regulation declaring an unlicensed practice of the business or occupation to be illegal.

Food Management, at 720 (*citing Annot.*, 82 A.L.R. 2d 1429; 5 *Am. Jur. 2d Architects*, §4; 33 Am. Jur. Licenses §§70-71; 53 C.J.S. Licenses §59). The court agreed with the trial court that the portion of the contract that involved unlicensed engineering and architectural services was illegal. The court found that the plaintiff could not recover any unpaid amounts still due under the illegal portion involving the unlicensed engineering and architectural work. However, the court concluded that the defendants counterclaim for disgorgement of monies it already paid should be denied because there was no legal basis "for the recovery back of money voluntarily paid under an architectural or engineering contract to an unlicensed party. *Id.* at 727. This was because the court felt that allowing "both retainment of services and recovery back of money paid is not necessary to effectuate the public policy of the licensing statutes, and there would be no inequitable harm to [defendant] in not invoking restitution because, as found by the trial court, it obtained the service it had bargained for." *Id.*; *See also Electrovoice International, Inc. v. Sarasohn Adjusting Company*, 149 Misc. 2d 924, 567 N.Y.S. 2d 568 (1990)(holding that an

unlicensed public adjuster would not have been able to sue for unpaid fees, but may keep any monies paid voluntarily where the other party received the full benefit of its bargain).

What the foregoing cases have in common is that although they did not require disgorgement by the unlicensed party of payments received while in violation of the statute, they also all clearly held that the unlicensed party may not bring an action to enforce the contract and the other party may use the lack of a license as a defense to any such action. In the instant matter, the Defendants have not sought to recover any monies paid prior to October, 1, 2009, perhaps because they are aware that the above cases do not permit such recovery. However, as those cases provide, §§102.6.4 and 102.7.1 of the PMC provide Defendants with " a perfect defense" to Plaintiff's claims for unpaid rent due before May 19, 2010.

C. Public Policy Protected by the PMC.

The Plaintiff argues that the sole purpose of requiring landlords to obtain Housing Licenses is to simply provide the City of Philadelphia with a mechanism to obtain addresses in order to serve landlords with notice of housing violations. The Plaintiff argues that requiring a landlord to forfeit his or her right to collect rent because of a failure to obtain a Housing License does not further this specific intent of the PMC, but instead gives tenants a windfall which the Plaintiff deems unnecessary to effectuate the objectives of the PMC.

While the Plaintiff is correct about the specific reasons for requiring landlords to obtain Housing Licenses, he fails to understand the broader interests protected by the PMC and the reasons that Philadelphia City Council sought the information required to be provided in applications for Housing Licenses. Section 101.3 of the PMC sets forth this broader protection as follows:

> **PM-101.3 Intent:** This PMC shall be construed to secure its expressed intent, which is to insure the public health, safety and welfare to the extent that they are

> affected by the continued occupancy of and maintenance of existing structures and premises. Existing structures and premises which are not in compliance with this code shall be altered or repaired to provide the maximum health safety and welfare as required herein.

PM-101.3.

Section 101.3 makes it clear that the PMC was enacted in the interest of protecting the health, safety and welfare of tenants and the general public from harm resulting from dangerous property conditions that exist at rental properties. Therefore, although the specific reason for requiring landlords to apply for and obtain a Housing License is to get landlords to supply information to L&I in order to facilitate proper service of violations and expedite remediation, this does not in any way limit the broader intent of prevention of public harm.

The same arguments made by the Plaintiff herein were also made to and rejected by the Supreme Court of New York in *Jo-Fra Properties, Inc. v. Leland Bobbe, et. al.*, 2009 Slip Op 31976U, 2009 N.Y. Misc. *LEXIS* 4520 (2009). In *Jo-Fra Properties*, the Plaintiff owned three commercial buildings in Manhattan designated as Interim Multiple Dwelling ("IMD") pursuant to New York State's Multiple Dwelling Law a/k/a the "Loft Law". *Jo-Fra Properties* at 1. The defendants were tenants of the units in the IMDs. The defendants had occupied the buildings for 10-20 years under commercial leases and were all now residing in the buildings. *Id.* at 4. The tenants had not paid rent for years. *Id.*

Pursuant to the terms of the Loft Law, the process of converting the buildings from commercial properties into residential lofts required the owner to go through a lengthy legalization process and obtain a Certificate of Occupancy ("CO"). *Id.* Under certain circumstances an owner could collect rent on an interim basis if an alteration permit was obtained and the owner was in complete compliance with the other provisions of the Loft Law. *Id.* at 23. Without such application and compliance, however the owner was prohibited by law

from collecting rent during the conversion process. *Id.* Moreover, under the Loft Law, future compliance did not cure past non-compliance and rent which accrued during the period on non-compliance was not recoverable. *Id.* at 10. In the *Jo-Fra Properties* case, the owner therein did not obtain an alteration permit in time to allow him to collect rent on an interim basis. *Id.*

The owner brought suit, *inter alia,* to collect rent due from the defendants. The defendants defended the claim by asserting that the plaintiff had failed to obtain a CO in accordance with the Loft Law and as a result was barred from collecting rent. *Id.* at 10. The plaintiff made similar arguments to those made by the Plaintiff herein that: 1) the policy behind the Loft Law would be undermined by allowing the tenants to live rent free and deny the owner compensation for the use of his property; and that 2) "any interpretation that denies the plaintiff a right to collect rents is an unconstitutional regulatory taking of a property right without compensation, in violation of the *Fifth Amendment*"[3]. *Id.* at 7.

In ruling in favor of the defendant/tenants, the court in *Jo-Fra Properties* stated that because the Loft Law was remedial in nature "[it] is to be 'liberally construed' to spread its beneficial effects as widely as possible". *Id* at 22. The court stated that "the purpose [of the Loft Law] is to facilitate the legalization of commercial and manufacturing loft buildings and interim multiple dwellings and bring them into compliance within a time certain." *Id.* at 28. The court found that the Loft Board had "'no duty to ensure that petitioners had read the law' concerning deadlines [to obtain a CO or seek an alteration permit in time to collect rent]." *Id.* at 29. The court concluded

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[3] The court never reached the constitutional issue because it found that the plaintiff had failed to notify the New York Attorney General under a rule similar to Pa. R.Civ. P. 235. Pa.R.Civ.P. 235 requires that litigants promptly notify the Pennsylvania Attorney General of any allegations that a statute or ordinance is unconstitutional. This Court agrees with the Defendants that the Plaintiff herein failed to comply with Rule 235 by neglecting to notify the Pennsylvania Attorney General of his constitutional claims. However, this Court still resolves the constitutional issues raised by Plaintiff in the interest of settling the question for future litigants. Since this Court finds that the PMC is constitutional for the reasons explained below, there is no prejudice to the Commonwealth as a result of fact that the Attorney General did not participate in this case.

that it was "'charged with enforcing the statute as written'" because the "'language of the statute...is clear and unequivocal and not subject to judicial interpretation.'" *Id.* at 28.

Much like the Loft Law addressed in *Jo-Fra Properties*, the PMC is intended to protect the health safety and welfare of public from dangers created by unsafe rental properties and to ensure compliance with building and property codes. The CO required by the Loft Law is analogous to the Housing License that the Plaintiff herein failed to obtain. It is even easier for the Plaintiff to comply with the PMC by simply applying for a Housing License and paying a nominal fee. There are no requirements similar to those in the Loft Law of making alterations, obtaining an alteration permit and maintaining complete compliance with all other provisions of the law. The ease of obtaining a Housing License is no better evidenced than by the fact that the Plaintiff obtained one with little effort when he needed it to file his LT Complaint and initiate the instant proceedings. Thus, this Court agrees with the *Jo-Fra Properties* court that the PMC is a remedial ordinance and that the hardship of having to apply for the Housing License and pay a nominal fee are far outweighed by the goals of the PMC. Moreover, the consequences of failing to obtain a Housing License are clear and unequivocal and not subject to judicial interpretation. As a result, this Court finds no basis to permit the Plaintiff to collect rent during the period he failed to possess a Housing License.

D. Constitutionality of the Philadelphia Property Maintenance PMC

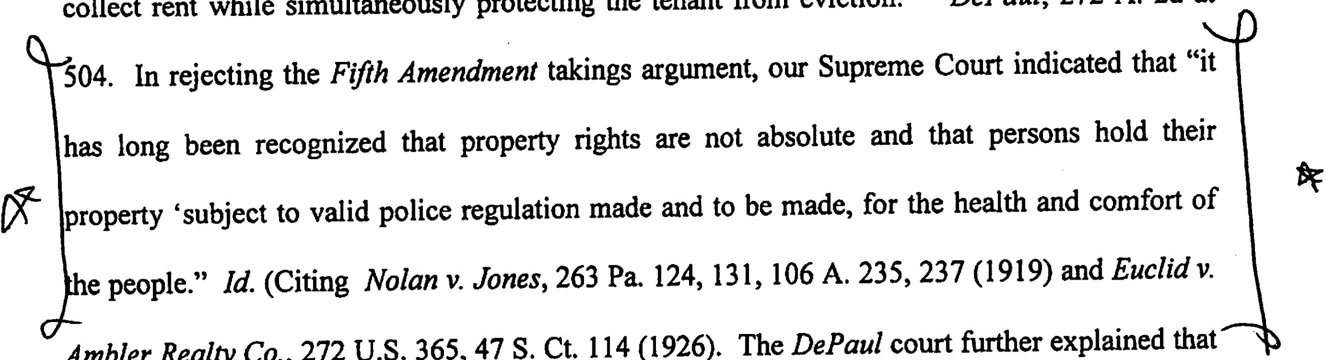
Having now found that the language and intent of the PMC expressly prohibits the Plaintiff from collecting the rents that accrued before he obtained his Housing License, we now turn to the Plaintiff's arguments that §§102.6.4 and 102.7.1 of the PMC are unconstitutional. He argues that to allow tenants to use those provisions as a defense to otherwise valid claims for rent confers unintended third party benefits upon tenants, resulting in either the taking of his property

without due process of law, or the unconstitutional interference with private contractual rights entered into between he and the Defendants, both private parties.

1. Taking of Property without Due Process

In considering the constitutional issues raised by the Plaintiff, we need look no further than the Pennsylvania Supreme Court's decision in *DePaul v. Kauffman*, 441 Pa. 386, 272 A. 2d. 500 (1971). In *DePaul*, our Supreme Court was asked to invalidate the Pennsylvania Rent Withholding Act, 35 P.S. § 1700-1 (the "Rent Withholding Act") for the same reasons the Plaintiff seeks to invalidate §§102.6.4 and 102.7.1 of the PMC. The Rent Withholding Act is a statewide act that allows tenants to withhold their rent and pay the monies into escrow when a rental property is certified by a municipal authority as unfit for human habitation. Also, pursuant to the Rent Withholding Act, the tenant may not be evicted while the unsafe conditions exist. The Rent Withholding Act further provides that if the violations are cured within six-months, the landlord receives the rent monies paid into escrow. If not, the tenant gets the money back less the cost to repair the property to cure the violations.

In *DePaul*, the property owner argued that "the Rent Withholding Act works as an arbitrary and unreasonable taking of their property without due process of law by denying him the right to collect rent while simultaneously protecting the tenant from eviction." *DePaul*, 272 A. 2d at 504. In rejecting the *Fifth Amendment* takings argument, our Supreme Court indicated that "it has long been recognized that property rights are not absolute and that persons hold their property 'subject to valid police regulation made and to be made, for the health and comfort of the people." *Id.* (Citing *Nolan v. Jones*, 263 Pa. 124, 131, 106 A. 235, 237 (1919) and *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114 (1926). The *DePaul* court further explained that "among the legitimate objects of the regulation of property for the general welfare is an adequate



supply of safe and decent housing. As put by Mr. Justice Holmes, 'Housing is a necessary of life. All the elements of a public interest justifying some degree of public control are present.'" *Id.* (Citing *Block v. Hirsh*, 256 U.S. 135, 156, 41 S. Ct. 458, 460 (1921). The court did recognize that "the exercise of police power must not be unreasonable, unduly oppressive, or patently beyond the necessities of the case and the means which it employs must have a real a substantial relation to the objects sought to be obtained. *Id.* (Citing *Gambone v. Commonwealth*, 375 Pa. 547, 551, 101 A. 2d 634, 637 (1954) and *Pennsylvania State Bd. of Pharmacy v. Pastor*, 441 Pa. 186, 272 A. 2d 487 (1970).

In dispensing with the property owner's due process takings challenge, our Supreme Court concluded that the sanctions imposed upon rental property owner by the Rent Withholding Act "bear a real and substantial relationship to the objective of assuring decent and habitable rental property". *Id.* The Court recognized that "in many parts of the Commonwealth…what housing does exist is in very poor condition." *Id.* The court concluded that "[i]t seems a matter of common sense that one in the business of renting real estate for profit who is faced with the temporary or permanent loss of rental income will, in some instances, take steps to avoid that loss." *Id.* at 504-505. In response to the argument that the Rent Withholding Act provided unnecessary third party benefits to the tenants by prohibiting eviction while the property remains unfit, the *DePaul* court stated "[t]o be sure this statutory right is a windfall to the tenant. However, it serves as an additional deterrent inducing the landlord to maintain his property in a habitable condition." *Id.* at 506.

As discussed above, the stated intent behind requiring landlords to obtain a Housing License is the same as the intent behind the Rent Withholding Act. It is the stated goal of the Property Maintenance PMC to "insure the public health safety and welfare to the extent that they are

affected by the continued occupancy of and maintenance of existing structures and premises" PM-101.3. In order to provide the City of Philadelphia with a mechanism to enforce property PMC violations, it is necessary for the City to have a working database of information about who owns each rental property, who is responsible for its maintenance and where they may be served with notices of violations. This information permits L&I to make sure that any unsafe conditions that threaten the health and safety of the public will be remedied promptly by the proper party. The application and licensing requirements of the PMC clearly create only a *de minimus* burden when weighed against the protections afforded to the public by the PMC. It cannot reasonably be argued that compliance with these requirements is unduly oppressive. Moreover, the consequences of non-compliance with the PMC serve as equally a reasonable deterrent as the consequences of failing to maintain properties under the Rent Withholding Act. For these reasons, this Court finds that the provisions of §§102.6.4 and 102.7.1 of the PMC are valid and reasonable exercises of police power and do not cause the taking of Plaintiff's property without due process of law.

2. Impairment of Private Contract

DePaul also considered and rejected the argument that that the Rent Withholding Act unconstitutionally impairs obligations agreed to by private parties which are memorialized in private contracts. *See Id.* at 506. "As applied to leases entered into and renewed after the effective date of the act, there can be no 'impairment', for the laws in force when a contract is entered into become part of the obligation of the contact 'with the same effect as if expressly incorporated in its terms'". *Id.* (Citing *Beaver County Bldg. & Loan Ass'n v. Winowich*, 323 Pa. 483, 489, 187 A. 481, 484 (1936); *Levy Leasing Co. v. Segal*, 258 U.S. 242, 249, 42 S. Ct. 289, 292 (1922) and *Oshkosh Waterworks Co. v. Oshkosh*, 187 U.S. 437, 446, 23 S. Ct. 234, 237

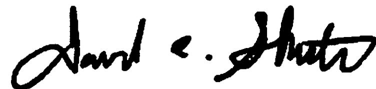
(1903)). With regard to leases that predated the Rental Withholding act, the court indicated that pre-existing contracts previously entered into between individuals are still "subject to the police power of the state, and therefore a statute passed in the legitimate exercise of a police power will be upheld by the courts, although it incidentally destroys existing contract rights." *Id.* at 507 [citations omitted].

In the instant matter, the Lease was clearly entered into subsequent to enactment of the PMC, and, therefore, is subject to the terms thereof. Thus there is no violation of the contract clauses of either the Pennsylvania Constitution or United States Constitutions. Even had the Lease not been created after the enactment of the PMC provisions in question here, we have already established that the provisions of the PMC challenged by the Plaintiff herein are valid exercises of police power and would pass muster anyway.

IV. CONCLUSION

For the foregoing reasons, this Court enters the following Order consistent herewith.

BY THE COURT:



Shuter, J.

DATE: December 14, 2011

EXHIBIT "A"

Rent Allowed Despite Lack Of License

OPINION

In February 1988, Gloria Carter signed a lease with defendant, Vivian Sheldon Bush for the property located at 3548 N. 18th St., Philadelphia, Pa., for $300 per month. Plaintiff/tenant moved into the rental property in February and all subsequent rents were duly paid. Plaintiff moved out at the termination of the lease and later discovered that from February to May of 1988, defendant/landlord did not have a residential rental property license as required by the Philadelphia Code. Plaintiff then brought this action seeking the return of $1,200 in rent for the period of landlord's noncompliance with the code.

The question in the instant case is whether a former tenant may recover rental payments made to her landlord while the landlord did not have a residential rental license as required by the Philadelphia Code. For the reasons set forth below, judgment is entered for defendant.

DISCUSSION

Pursuant to Section 7-502(3) of the Philadelphia Code, all owners of residential rental properties are required to obtain a rental license from the Department of Licenses. Furthermore, under §7-504(5), "no person shall collect rent with respect to any property that is required to be licensed pursuant to this chapter unless a valid license has been issued for said property." Section 7-505(1) also provides that anyone who fails to obtain a license shall be denied the right to collect rent during or for the period of noncompliance.

Although the above-referenced ordinances penalize a landlord by not allowing him or her to collect rent for the period of noncompliance, the Philadelphia Code does not address the instant situation of whether the landlord must *return* any rental payments received while in violation of the licensing provisions.

> The landlord did not have a valid license, but continued to collect rent

The landlord in the present case did not have a valid license for four months, yet she did receive and the tenant did pay rent for those respective months. Thus, even though the landlord was not technically allowed to collect the rent for this period, she did, in fact, receive rental payments. Now, after the termination of the landlord-tenant relationship, the tenant seeks to reclaim those payments solely on the basis of landlord's failure to obtain a rental license.

The question whether a former tenant may recover rental payments made to an unlicensed landlord has apparently never been addressed by Pennsylvania courts. In other jurisdictions, however, the cases generally hold that "in the absence of a statute providing for recovery. . . . one who has paid money to an unlicensed person in consideration of the performance of a contract by such person is not entitled to recover back the money so paid on the ground that the contract was illegal because the person performing the contract did not have a occupational or business license or permit which he was by law required to have." Annotation. *Recovery Back Of Money Paid To Unlicensed Person Required By Law To Have Occupational Or Business License Or Permit To Make Contracts*, 74 A.L.R. 3d 637, 642 (1976). The reasons behind these holdings are, inter alia, that "the law requiring the license does not specifically provide for such a right to recover back money paid, . . . that the allowance of recovery back is not necessary to effectuate the policy of the licensing statutes,

> The question has never been addressed by Pennsylvania courts

and the conclusion that equity and the principles of restitution do not require that their money be paid back. In this latter connection, recovery is denied on the ground that the compensation was a voluntary payment, that any misapprehension in the payments constituted a mistake of law by which the payor is bound, and that there is no equitable reason for making restitution to a plaintiff who gets the exchange which he expected." Id. at 642-44; *See also Comet Theatre Enterprises Inc. v. Cartwright* (1952, 9th Cir.) 195 F.2d 80 (applying California law); *Food Management Inc. v. Blue Ribbon Beef Pack, Inc.* (1969, 8th Cir.) 413 F.2d 716 (applying Iowa law).

Two Questions

We must now answer two questions concerning this general principle:

- Is this rule applicable to Pennsylvania Landlord-Tenant relationships?
- If the answer to the first question is in the affirmative, does application of the rule to the instant facts bar plaintiff from recovering rent already paid to defendant?

The answer to the first question is that this court has the power to apply the principle of non-recovery to Pennsylvania landlord-tenant relationships. This principle is a rule of contract law; Pennsylvania courts have defined landlord-tenant relationships as contractual in nature (*See Harnish v. Shannon*, 141 A.2d 347 (Pa. Sup. Ct. 1958)). Moreover, since Pennsylvania appellate courts have never addressed the instant issue, this court may look to the law of other jurisdictions (including, of course, the above principle) for guidance.

Application of the non-recovery principle to the instant case bars the plaintiff from recovering any back rent paid to the defendant. The reasons given in support of this principle by the *Comet Theatre* and *Food Management* courts are also applicable to the instant case. First, it is clear here, as it was to the *Comet Theatre* and *Food Management* courts, that the license law in question does not specifically provide a party the right to recover money already paid to an unlicensed person.

Section 7-505(1) of the Philadelphia Code states that anyone who fails to obtain a license shall be denied the right to collect rent during or for the period of noncompliance. This provision prevents an unlicensed landlord from bringing an action for back rent against a tenant; but it makes no mention of any rights that a tenant has for back rent already paid to an unlicensed landlord.

Second, as in *Comet Theatre* and *Food Management*, the allowance of recovery of back rent is not necessary to effectuate the policy of the licensing provision. In Section 7-501 of the Philadelphia Code, the City Council stated that the intent of the licensing provision was to keep an up-to-date address of all owners of residential rental properties so that owners would be amenable to service of process if code violations were discovered on the property. Section 7-505(1) was enacted merely to enforce compliance with the requirements of obtaining a license and was never meant to be used by a tenant as a means of circumventing a fully executed contract with a landlord.

Third, like *Comet Theatre* and *Food Management*, equitable principles do not require that the defendant pay back the plaintiff the rent collected. The plaintiff makes no allegation that she did not receive what she contracted for in the lease. We must therefore conclude that defendant provided plaintiff with a satisfactory leasehold premises, or at least a leasehold premises commensurate with the amount of monthly rent that plaintiff paid. The fact that defendant did not have a residential rental license should not outweigh the fact that he otherwise performed his contractual duties satisfactorily.

Few Opinions

The small body of opinions which allow recovery from an unlicensed person are all distinguishable from the instant case. Within this line of opinions, recovery has been permitted "on the fact that the person who paid for the services is not in pari delicto with the unlicensed person and that even though the payor may be considered technically pari delicto, he may be permitted to recover if the law in question was passed for his protection and it appears that the purposes of the law will be better effectuated by granting relief than by denying it . . . Recovery at least in part has been allowed where the [...] receiving the payment did not fully [...] form the agreement on his part so th[...] payor did not get what he had barg[...] for, and recovery may be allowed [...] the payee falsely represented him[...] be licensed or where there is ob[...] chicanery." Annotation, 74 A.L.R. [...] 655-56 and cases cited therein.

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As explained above, the instant li[...] ing statute was not intended to prot[...] general public, but merely was int[...] to make landlords amenable to proc[...] code violations. Secondly, the [...] payor (i.e. the plaintiff) received wh[...] had bargained for under the lease. [...] equitable considerations compel [...] tiff's recovery. Third, there is no [...] tion that defendant falsely repr[...] himself to be licensed.

For the foregoing reasons, thi[...] holds that despite the fact that the [...] dant did not have a residential re[...] cense, the plaintiff was not entitled [...] §7-505(1) of the Philadelphia Cod[...] cover rent already paid to the def[...]

Accordingly, judgment is ent[...] defendant, Vivian Sheldon Bus[...] against plaintiff, Gloria Carter.

SILBERSTEIN.

January 6, 1989

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