

## NEPTUNE TOWNSHIP RENT LEVELING BOARD

### Minutes – March 19, 2015

Constance Holmes, Chairperson, called the meeting to order at 6:05 pm and requested the Secretary to call the roll. The following members were present: James Manning, Jr., Ruth Johnson and Constance Holmes. Charles Woolfolk and Morrel Massicot were absent.

Ms. Holmes stated that the notice requirements of R.S. 10:4-18 have satisfied by the publication of the required advertisement in The Coaster on January 15, 2015 posting the notice on the Board in the Municipal Complex and filing a copy of the said notice with the Municipal Clerk.

Ms. Holmes announced that the Consumer Price Index [January's was 258.376, a 0.5% decrease over the past twelve months].

### **APPROVAL OF MINUTES**

Mr. Manning offered a motion, moved and seconded by Mrs. Johnson to approve the minutes for January 8 & February 12, 2015; all were in favor.

### **ACTION ITEMS**

Mr. Anthony read the following resolution in its entirety. The resolution was offered by Mr. Manning, moved and seconded by Ms. Johnson with corrections that are highlighted:

### **RESOLUTION OF THE NEPTUNE TOWNSHIP RENT LEVELING BOARD OF TENANT'S COMPLAINT OF BETTY GRAHAM**

WHEREAS, the Neptune Township Rent Leveling Board was presented with a complaint by BETTY GRAHAM, residing at 1516 Monroe Avenue, Apt. 20A (Harlee Gardens), Neptune Township, New Jersey 07753, on January 12, 2015, alleging reduction in services in violation of

Section 4-30.9, entitled, "Standards of Service" of the Neptune Township Rent Control Ordinance and sought relief as a result thereof; and

WHEREAS, a hearing on the complaint was scheduled and heard on February 12, 2015, after service was made upon the landlord by Certified Mail/Return Receipt Requested, namely, Neptune Housing Associates, LLC, at 691, Elizabeth Avenue, Suite 2, Newark, New Jersey 07112, as submitted by the tenant, as Exhibit T-1 to the Complaint, within the time period prescribed by local ordinance; and

WHEREAS, on February 12, 2015 the complainant, BETTY GRAHAM, and witness and co-resident daughter Dawn, appeared before the Neptune Township Rent Leveling Board and testified, but neither the landlord nor a representative appeared despite notice of the hearing; and

WHEREAS, the Neptune Township Rent Leveling Board, per the aforesaid complaint, received the following grievances and requests for relief:

1. That the tenants were living in the subject premises with either a total lack of heat or a reduction in heat in violation of State and Local Law from January 1, 2014 through May 1, 2014; and October 1, 2014 through December 31, 2014 and January 1, 2015 through the date of the hearing on February 12, 2015, to the extent that the tenants had to make use of electric heaters in the master bedroom and an electric heater in the living room/dining room area and made use of an electric blanket when sleeping with radiators either totally inoperable or barely providing heat.
2. That a leak existed two years ago from the upstairs apartment, and although the leak was corrected, since January 15, 2014, the ceiling has remained in a condition of showing bubbles and prior water damage.
3. That the parking lights have been inoperable in the apartment parking lot from January 14, 2014 until corrected on January 17, 2015; to the extent that the parking lot remained totally dark at night and the tenants had to use a flashlight to go to and from their automobiles, and the tenants were in fear of their safety and health throughout the period.

4. That the sole bathroom toilet was inoperable for three days in December, 2014, to the point that the tenants could not use the toilet facilities during the aforesaid period.
5. That as a result of the aforesaid lack of heat, the tenants electric bills have been higher than normal, and the tenants were advised by representatives of the landlord that the heating system, or furnace, was in need of repair or replacement.

NOW, THEREFORE, BE IT RESOLVED, by the Neptune Township Rent Leveling Board, that the Neptune Township Rent Leveling Board has found the following facts:

1. A question was raised to the Township through documentation as to whether the apartment complex, known as Harlee Gardens, was privately owned and financed, or privately owned and subsidized or financed by a Federal or State Agency. It was concluded by the Board through testimony that the apartment complex appeared to be privately owned and financed, and therefore not subject to any restrictions due to Federal or State Statute. It was noted by the Board that even if there was State or even Federal financing that the action requested by the tenant, Betty Graham, was not to address a rent increase or eviction, which may have been preempted by Federal or State Statute, but merely to address habitability and reduced services, which have not been preempted by State or Federal Statute, per the court decision of Housing Authority v. Scott, 137 N.J. Super. 110 App. Div. (1975).
2. The Board finds that appropriate due process notice was given to the landlord. Appropriate notice by Certified Mail/Return Receipt Requested was made in accordance with the law set forth more fully in the case of Ivy Hill Park, Section 3 v. Abutidze, 371 N.J. Super. 103 (2004), per Exhibit T-1 to the Complaint, at the address provided to all tenants by letter from the landlord as set forth more fully in Exhibit T-2 to the Complaint.
3. The Neptune Township Rent Leveling Board has subject matter jurisdiction over the tenant and landlord, and the tenant/complainant has been a tenant in the subject apartment for over thirty years, and the tenant/complainant's unit is one of well over five (5) units residential units in the apartment complex.

4. The tenant, Betty Graham, along with her daughter, has occupied the unit with a heating system, which is totally inadequate, leading to inadequate or no heat from January 12, 2014 through March 31, 2014, for the entire month of December, 2014 and from January 1, 2015 through February 12, 2015. Since the Board can only enforce the Ordinance for one year back from the filing of the Complaint, **the Board cannot enforce reduced services before January 12, 2014.** However, the Board does find reduced services and the lack of heat representing evidence of a significant deficiency as viewed by law, so as to qualify by law for rent relief for the aforesaid time period. The aforesaid determination is based on testimony of the tenant and co-tenant daughter, memos and pictures of a thermometer showing the temperature in the subject unit at stated times and dates (Exhibit T-3 to the Complaint), notices from Neptune Township Code Enforcement and Construction Department concerning complaints of lack of heat (Exhibit T-5 to the Complaint) and police reports concerning the same (Exhibit T-6 to the Complaint).
5. The Board finds unrefuted evidence that there were no lights in the parking lot from January 14, 2014 to January 17, 2015 and that this is evidence of a significant deficiency as viewed by the law so as to qualify for rent relief.
6. The Board finds that there is unrefuted evidence that the tenant's toilet was inoperable for three days in December of 2014 and that this is a significant deficiency as viewed by the law so as to qualify for rent relief.
7. The Board finds that the leaks from the upstairs apartment were beyond the one year period for reviewing complaints, and that the continued problems with the ceiling were cosmetic in nature and do not represent significant deficiencies as viewed by the law so as to qualify for rent relief.
8. The Board finds through testimony and documentation, including letter of March 10, 2014 representing Exhibit T-4 and the notices from Neptune Township Code Enforcement Department and Construction Department and Police Reports submitted into evidence as T-5 and T-6, that the landlord was given reasonable and adequate notice concerning heating problems and deficiencies, and to date has not provided sufficient or reasonable

response in addressing said heating problems, and that heat in the subject unit is an essential habitability facility required by law and existing at the time that the tenancy first commenced. The Board also finds credible evidence and testimony that oral notice was given to the landlord by telephone and through maintenance employees with regard to the lack of lighting in the parking lot, and the toilet that did not operate, the former of which, the landlord had constructive notice through his maintenance employees of an exterior common element issue, and considering the necessity of lighting in the parking lot and the use of a toilet, did not respond in a reasonable time period to correct the same. It is also concluded by the Board that these items are vital facilities for habitability and are required by law and existed at the time the tenancy commenced.

The Neptune Township Rent Leveling Board hereby finds that the above referenced reduced services represent a reduced rental value, as set forth below and that the tenant/complainant, Betty Graham, shall be entitled to credits towards rents due and owing in the future, as set forth below.

BE IT ORDERED AND DETERMINED, as follows:

1. The tenant is entitled to a fifty percent (50%) rent reduction for January 12, 2014 through March 31, 2014; December 1, 2014 through December 31, 2014 and January 1, 2015 through February 12, 2015. Based on rent of 979.00 in 2014 until April 30, 2014, the reduced rental value represents \$32.63 per day, divided by 50% or a credit of \$16.32 per day, times 79 days = \$1,289.28. With rent at \$1,003.48 after April 30, 2014, the balance of the heat credits involve daily rent for December, 2014 and January 1, 2015 through February 12, 2015 of \$33.45 per day with a 50% credit of \$16.73 times 74 days = \$1,238.02; for a grand total credit based on heating deficiency of \$2,527.30.
2. The Board finds a reduced rental value as a result of the tenant's toilet not working for three days in December, 2014 as representing ten percent (10%) reduction in services per day or \$3.35 per day times 3 = \$10.05.

3. The Board finds the lack of lighting in the parking lot from January 12, 2014 through January 17, 2015, which represents a reduction of value of 2 percent (2%) or \$.65 per day from January 12, 2014 through April 30, 2014 for a total of \$78.00, and from May 1, 2014 through January 17, 2015 at \$.67 per day for total of \$175.54 for total credits due on improper lighting of \$253.54.
  
4. Total credits due and owing with regard to all deficiencies amount to \$2,790.89, which will apply to reduction in rent for the months of April as a full credit of \$1,003.48; May in the amount of \$1,003.48 and a credit of \$783.90 for the balance for the month of June, 2015; that is no rent need be paid for the months of April and May, with a credit in June, 2015. It is also hereby ordered, that should the landlord not correct the heating situation to comply with State Statute and local ordinance between February 13, 2015 and May 1, 2015, the tenant shall automatically have a continued credit of fifty percent (50%) of all rent for those days in which there continues to be a violation for the period between February 13, 2015 and May 1, 2015. The tenant shall also have the right to file a subsequent complaint for any continued reduced services with regard to the subject unit either with regard to heat after May 1, 2015 or any other deficiency that may arise at any time.

IT IS FURTHER ORDERED AND DETERMINED, that the municipal attorney is hereby authorized to provide the landlord, Neptune Housing Associates, LLC, with offices located at 691 Elizabeth Avenue, Suite 2, Newark, New Jersey 07112, and the tenant, BETTY GRAHAM, 1516 Monroe Avenue, Apt. 20A, Neptune Township, NJ 07753, with a written notice of this decision by copy of this resolution effective the date of execution of this resolution by supplying the same pursuant to Ordinance and that either the landlord or the tenant shall have a right within twenty (20) days of the date of the determination in accordance with the Neptune Township Rent Control Ordinance, Rules And Regulations of the Neptune Township Rent Leveling Board to file an appeal before the Neptune Township Committee.

AND ADOPTED ON ROLL CALL BY THE FOLLOWING VOTES:

ROLL CALL

Affirmative: James Manning, Jr; Ruth Johnson; Constance Holmes

Negative: none

Absent: Morrel Massicot, Chalres Woolfolk

Dated: March 19, 2015

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CONSTANCE HOLMES,

CHAIRWOMAN

Mr. Anthony read the following resolution in its entirety. The resolution was offered by Mrs. Holmes, moved and seconded by Ms. Johnson:

**RESOLUTION OF NEPTUNE TOWNSHIP RENT LEVELING BOARD OF  
TENANT COMPLAINT OF THELMA DAVIS**

WHEREAS, Thelma Davis, residing at 24 Winding Ridge Drive, Neptune Township, New Jersey, filed a tenant Complaint on January 15, 2015, alleging an illegal increase in rent in violation of Section 4-30.2 of the Ordinance amending Chapter IV of the General Ordinance of the Township of Neptune creating Rent Control; Protective Tenancy and a Rent Leveling Board, and demanding relief pursuant to the aforesaid Ordinance for an illegal increase in rent; and

WHEREAS, a hearing on the aforesaid Complaint was heard on February 12, 2015 after appropriate notice was provided to the landlord by the Complainant, Thelma Davis, pursuant to the notice and time requirements of the Neptune Township Rent Control Ordinance; and

WHEREAS, present at the hearing was the tenant, Thelma Davis, and a representative of the landlord Barbara Passwaters, Property Manager of Winding Ridge,

and employee of Pennrose Management Company, who testified as to the Complaint in this matter; and

WHEREAS, the tenant claimed an unfair and illegal lease renewal increase in rent of \$12.00 per month. The tenant is a Section 8 tenant, who receives her subsidy through the Neptune Township Housing Authority that pays \$798.00 per month of the total rent of \$1,180.00; with the balance paid for by the tenant, and it is alleged that the Housing Authority will not authorize payment of the \$12.00 per month increase, nor will it allow the tenant to pay the \$12.00 a month increase without losing her subsidy.

NOW, THEREFORE, BE IT RESOLVED, by the Neptune Township Rent Leveling Board, that based on the testimony and representations made by the respective parties, the Neptune Township Rent Leveling Board has made the following determination:

1. The Neptune Township Rent Leveling Board has factually determined that the Complainant had entered into a tenancy relationship at the subject premises known as Winding Ridge for the time period necessary for filing this Complaint, and that the apartment complex known as Winding Ridge consists of a number of units allowing application of the Rent Control Ordinance.
2. The Rent Leveling Board has found that procedurally there was due process of law followed with the landlord properly served with the Complaint, as well as Neptune Township Housing Authority; though a representative from the Neptune Housing Authority was not present, nor did the Housing Authority contact the Board concerning an appearance.
3. The Board has factually determined that the tenant is a Section 8 subsidized tenant where a tenant is subject to public assisted housing based on tenant based qualifications of HUD. In other words, the tenant is a Section 8 Voucher Tenant in a private apartment complex, namely Winding Ridge, which clearly received federal subsidies in order to remain and continue under the present contract both with Winding Ridge and with the Neptune Township Housing Authority. The Board has determined that pursuant to 24 C.F.R. Section 246.21 of the United States Code of Federal Regulations, entitled, "Local Rent Control," Federal Law preempts local Rent Control in subsidized,

insured projects and Tenant Based Federal Subsidized Housing, and furthermore based on the New Jersey Supreme Court Case of Overlook Terrace Management, 71 N.J. 451 (1976), the Rent Control Board is preempted by Federal Statute in addressing rent increases such as the one which is the subject of this Complaint.

4. Therefore, the aforesaid Complaint is dismissed based on the Rent Leveling Board's lack of jurisdiction to hear the same.

IT IS FURTHER ORDERED AND DETERMINED, that the municipal attorney is hereby authorized to provide the landlord, Pennrose Management Co., 9 Winding Ridge Circle, Neptune Township, NJ 07753 to the attention of Barbara Passwaters, and the tenant, Thelma Davis, residing at 24 Winding Ridge Drive, Neptune Township, New Jersey 07753, with a written notice of this decision by copy of this resolution effective the date of execution of this resolution by supplying the same pursuant to the Rent Control Ordinance and that either the landlord or the tenant shall have a right within twenty (20) days of the date of the determination in accordance with the Rent Control Ordinance, Rules And Regulations of the Neptune Township Rent Leveling Board to file an appeal before the Neptune Township Committee.

AND ADOPTED ON ROLL CALL BY THE FOLLOWING VOTES:

ROLL CALL

Affirmative: James Manning, Jr; Ruth Johnson; Constance Holmes

Negative: none

Absent: Morrel Massicott and Charles Woolfolk

Dated: March 19, 2015

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CONSTANCE HOLMES, CHAIRWOMAN

## **PUBLIC PARTICIPATION**

Betty Graham , 1516 Monroe Avenue, thanked the Board for their help.

Mr. Anthony explained the process and moving forward after the adoption of the resolution.

Mrs. Johnson asked Ms. Graham if she was still experience problems.

Ms. Graham stated she was and that she's forwarded more pictures to Ms. Howard.

Mr. Manning offered a motion to adjourn the meeting at 6:38 pm, moved and seconded by Mrs. Johnson. All were in favor.

Pamela D. Howard

Secretary