

NEPTUNE TOWNSHIP RENT LEVELING BOARD

Minutes – November 2, 2017

Mr. Manning , Chairperson, called the meeting to order at 6:00 pm and requested the Secretary to call the roll. The following members were present: Ruth Johnson (arrived at 6:05pm), Connie Holmes, Naomi Riley, Catherine McAphee, James Manning, Jr. Absent: Jeff Klein and Morrell Massicot.

Mr. Manning stated adequate notice of this meeting as required by P.L. Chapter 231 has been provided by notice in the Coaster on January 12, 2017, which was posted on the bulletin board of the Municipal Complex and filing a said notice with the Municipal Clerk.

Mr. Manning announced that the Consumer Price Index [October's price index was 270.059, area prices up 0.5 percent over the month and up 2.17% over the year].

APPROVAL OF MINUTES

Mrs. Holmes offered a motion, moved and seconded by Mrs. McAphee to approve the minutes of the meeting for October 12, 2017; all were in favor. (Mrs. Johnson did not vote because she had not arrived at this time)

RESOLUTIONS

Mr. Anthony provided a summary of the resolution prior to voting.

Mrs. Holmes offered the following resolution, moved and seconded by Mrs. Johnson that it be adopted:

RESOLUTION OF THE NEPTUNE TOWNSHIP RENT LEVELING BOARD OF TENANTS COMPLAINT OF CAROLYN SUBLETT #17-1 VS SEBASTIAN VILLA

WHEREAS, the Neptune Township Rent Leveling Board was presented with a Complaint by Carolyn Sublett, residing at 2305 West Bangs Avenue, Apt. 10B Neptune Township, New Jersey, a/k/a Sebastian Villa Apartments, 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 October 12, 2017, after service was made upon the Landlord by Certified Mail/Return Receipt Requested, at Sebastian Village Apartments, c/o Andrew Phillips, 2305 West Bangs Avenue, Neptune

Township, New Jersey 07753, and received by the Landlord on September 18, 2017, as submitted by Carolyn Sublett, within the time period prescribed by local ordinance; and

WHEREAS, on October 12, 2017 the Complainant, Carolyn Sublett, (hereinafter referred to as the “Tenant/Complainant”) appeared before the Neptune Township Rent Leveling Board and testified before the Board. Jacqueline Locasto, Community Manager; Thomas Lee, Superintendent and Kelly Harris, Asst. Manager, appeared on behalf of the Landlord, and testified and acknowledged service and receipt of the Complaint in this matter; and

WHEREAS, the Neptune Township Rent Leveling Board, per the aforesaid Complaint and testimony of the Tenant/Complainant, received the following information, grievances and requests for relief:

1. That the Tenant/Complainant, since moving into the subject premises on or about February 28, 2017, at a subsidized rent of \$216.00 per month, lives in a 171 unit elderly apartment community consisting of Section 8 rental assistance for 100% of the community’s units via HUD’s Rental Assistance Demonstration Program, which provides rental subsidy and additional housing security for the community’s elderly tenant base, and is therefore characterized as a project-based federally subsidized project, for which the contract rent is \$1,191.00, of which the Tenant/Complainant pays \$216.00, and the balance of \$975.00 is subsidized. The Tenant/Complainant complained of the following deficiencies since entering the subject property based on the Complaint in this matter and testimony:
 - a. Water coming into apartment from neighbor’s apartment. An odor was first noticed on May 1, 2017, but only becoming severe on August 14, 2017 when the Tenant/Complainant’s bathroom tub was removed to be replaced; leaving a temporary hole in the wall, which odor continued until September 15, 2017 when the wall was repaired and the new tub installed, and the Tenant/Complainant indicated that the Landlord had been notified by telephone calls and personal contact with the Superintendent, Thomas Lee, while making repairs in the apartment with the odor becoming so severe between September 8th – September 10th that it was difficult to make use of the bathroom.

- b. There exists a hole in the hallway wall, which continues to the present time and was created when management was making repairs to the Tenant/Complainant's bathroom tub and determined that the neighboring apartment's bathroom plumbing was connected to the Tenant/Complainant's plumbing, and it was creating its own issues.
- c. Two holes in the bathroom wall caused by the removal of the old tub and its replacement with a new tub, which were covered by black plastic bags or wrapping and required further replacement of tiles and drywall, all of which occurred between August 14, 2017 and September 6, 2017; though the tiling was not completed until September 27, 2017 due to a request from the Tenant/Complainant for a certain color tile, and the condition did not prevent the Tenant/Complainant from making use of the bathroom tub either for bathing or showering.
- d. Water seeping and leaking from around the air conditioning opening/hole (not air conditioner) and noticed whenever there was heavy rain beginning April 1, 2017 and continuing to date, but only when it rains. Notice was given to the Landlord by letter of April 20, 2017; May 25, 2017; June 19, 2017 and July 14, 2017; though testimony did not state exactly who received said letter, and apparently no one present at the aforesaid hearing received the letter. The leaks are allegedly causing a safety hazard, since there is an electrical outlet below the air conditioner, which may be in contact with the leaks. The Tenant/Complainant indicated that she rarely, if ever, uses the air conditioner.
- e. A clogged sink in bathroom and kitchen was clogged for three days, which the Landlord corrected after receiving notification from the Tenant/Complainant.
- f. Tenant/Complainant claimed the tiled wall in the bathroom is not flush or level with the surface, which the Landlord claims was damaged due to the fact that the Tenant/Complainant was placing tape on the caulked areas for no apparent reason.
- g. There is a two inch trench going along the side of the bathroom tub with ponding water. The Tenant/Complainant notified the Landlord by phone and personal contact on or about August 14, 2017, and the Landlord indicated that the trench was caused by the replacement of the old tub with a newer, but slightly smaller tub, and the Landlord cemented the trench closed, but the ponding of water was discovered to be caused by water coming from the next apartment, which then had to be addressed separately. Apparently

based on the testimony, the problem was resolved approximately two weeks ago.

- h. The water leaking into hallway and inside bathroom is related to the trench situation and caused by the next door neighbor's leaks, which were corrected.
 - i. The bathroom grab bars, located next to the toilet and in the bathtub were taken out when the bathtub was being replaced, and were not replaced until the tub was replaced, so that the toilet and bathtub did not have grab bars between August 14, 2017 and early September, 2017; though the Tenant/Complainant indicated that she did not need to use the grab bars.
 - j. The bathroom wall was covered from August 14, 2017 to September 6, 2017 for tile replacement.
 - k. The Certificate of Occupancy listed the Tenant/Complainant as being in Apartment 4C when she is in 10B.
2. The Tenant/Complainant submitted the following exhibits as evidence to her case:
- T-1 Notice of Violation and Order to Correct Identification from the Code Enforcement Department of Neptune Township, dated September 19, 2017 as against Sebastian-Neptune Urban Renewal, LLC listing some of the deficiencies noted above.
 - T-2 Proof of Service of Complaint upon the Landlord with copies of Certified Mail receipts.
 - T-3 Police Department Report of September 8, 2017 concerning Tenant/Complainant's complaints with regard to odor from next door neighbor's apartment.
 - T-4 Certificate of Inspection for issuance of Certificate of Occupancy for Carolyn Sublett, dated February 14, 2017, listing unit as 4C.
 - T-5 Certificate of Inspection listing the issuance of a Certificate of Occupancy to Unit 10B and identifying the tenant as Timothy Kinney.
 - T-6 Code Enforcement of Neptune Complaint of Carolyn Sublett dated September 5, 2017 concerning open wall, plumbing and water leaks.

- T-7 Code Enforcement of Neptune Complaint of Carolyn Sublett dated September 15, 2017 referring to hole in wall, no grab bars, trench beside tub and smell.
- T-8 Photographs of clogged sink, tile in the bathroom and outside hallway hole.
- T-9 Photographs of other side of wall from August 13, 2017 to September 6, 2017 and outside hallway.
- T-10 Photographs of grab bars being removed and leaks from the air conditioner.
- T-11 Photographs of the bathroom trench along the tub.
- T-12 Copy of letter sent to management dated April 20, 2017; May 25, 2017; June 19, 2017 and July 14, 2017.
- T-13 Photographs of rain leaks in the air conditioning hole area
- T-14 Copy of letter sent to management on June 19, 2017.
- T-15 Photographs of leaks from air conditioning hole area.
- T-16 Letter to management dated May 25, 2017.
- T-17 Copies of Certified Mail receipts which accompanied letters.
- T-18 Code Enforcement results showing correction of violations.
- T-19 Pictures of bathroom October 4, 2017.

3. The Landlord submitted the following exhibits on its behalf:

- L-1 Photograph of bathroom tub.
- L-2 Photograph of bathroom tile.
- L-3 Photograph of bathroom floor.
- L-4 Photograph of front door.
- L-5 Maintenance date.

- L-6 Photograph of soap dish/grab bar.
- L-7 Photograph of bathroom towel rack.
- L-8 Work order – drywall – September 7, 2017
- L-9 Work Order - air conditioner – September 14, 2017

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

- i. That the Board finds that appropriate due process notice was given to the Landlord by Certified Mail/Return Receipt Requested and the Landlord acknowledged service of the notice within the time period of the Ordinance and in compliance with the case of Ivy Hill Park, Section 3 v. Abutidze, 371 N.J. Super. 103 (2004), as further acknowledged by the Landlord at the address provided to all tenants.
- ii. That the Neptune Township Rent Leveling Board has subject matter jurisdiction over the Tenant/Complainant and Landlord based on the number of units in the complex, and based on Court decisions of the Housing Authority of the City of Newark v. John Scott, 137 N.J. Super. 110 (App. Div. 1975) and Housing Authority of the City of Bayonne v. Ross, 396 N.J. Super. 195 (App. Div. 2007), there is no federal preemption for Rent Control Boards to provide for allowances of rent abatements as a result of reduced services or habitability issues even though there may be preemption for other reasons, such as regulating rent increases. Therefore the Board finds that it does have subject matter jurisdiction.
 - 1. The Board found that the odor complaint does not represent a significant deficiency, since for the most part it only affected the Tenant/Complainant while an old tub was being replaced by a new tub, and did not cause lack of use of the bathroom.
 - 2. The Board found that the holes in the wall within the bathroom and the holes in the wall in the hallway were significant deficiencies and that the Landlord was put on notice, but that the Landlord reacted upon notice within a reasonable time period to correct the holes in the bathroom, and that the tenant had no lack of use of the bathroom or of the tub or shower during the time period which the holes existed and were well covered, and

that the hole in the hallway was due to work affecting more than one unit, and for the most part had no impact upon the Tenant/Complainant, since it was in a common area and did not affect the Tenant/Complainant's safety or welfare.

3. The Board found that the leaks around the air conditioning hole were a significant deficiency, but there was some confusion in terms of testimony as to whether the Landlord was truly notified of the problem due to the sporadic existence of the leaks only when it rained. The Board did not believe at this point in time that the deficiency has value, but placed the Landlord on notice that now the deficiency must be corrected within a reasonable time after it rains, or be proactive and correct the problem within the next 30 days, whichever occurs first.
4. The Board found that the clogged sinks in bathroom and kitchen were significant deficiencies, but that upon notification, the Landlord reacted within a reasonable period of time to correct the problem.
5. The Board found that the tile issue was an insignificant deficiency, which for the most part was cosmetic in nature.
6. The Board found that the trench along the bathtub was a significant deficiency and that the Landlord did not react within a reasonable time period, as the trench continued from between two weeks to 48 days, and resulted in stagnant water, and may have been a hazard to the tenant getting in and out of the bathtub. Therefore, the Board found that the trench deficiency is subject to a valuation analysis.
7. The Board found that the removal and replacement of the grab bars were significant deficiencies, but that the Landlord reacted within a reasonable amount of time to correct the problem, and there was no danger to the Tenant/Complainant, since the Tenant/Complainant indicated she never made use of the grab bars anyway.
8. The Board found that the covering of the bathroom wall for tile replacement was not a significant deficiency.
9. The Board found that incorrect numbering on the Certificate of Occupancy was not a significant deficiency.

The Neptune Township Rent Leveling Board hereby finds that the only significant deficiency noted by the Tenant/Complainant which is subject to a reduced rental value is the trench deficiency, which the Tenant/Complainant shall be entitled to credits toward rent due and owing in the future as set forth below.

BE IT ORDERED AND DETERMINED, as follows:

1. The Board found that the trench along the bathroom tub, which existed from two weeks to 48 days was clearly in existence between August 14, 2017 to September 30, 2017, and that the deficiency, which now has been fully corrected, has resulted in a reduced rental value from August 14, 2017 through September 30, 2017 of two percent of the total base rent actually paid by the tenant of \$216.00 per month (Tenant/Complainant's rent obligation – not total contract rent per the Housing Authority of the City of Newark v. John Scott, 137 N.J. Super. 110 (App. Div. 1975) and Housing Authority of the City of Bayonne v. Ross, 396 N.J. Super. 195 (App. Div. 2007), which represents a total credit based on apportioned rent of 48 days or \$6.97 per day (18 days) for the month of August, 2017 amounting to $\$125.46 \times .02\% = \underline{\$2.51}$ and \$7.20 per day (30 days) for the month of September amounting to $\$216.00 \times .02\% = \underline{\$4.32}$, for a total of \$6.83; based on the trench/tub deficiency.

IT IS FURTHER ORDERED AND DETERMINED as follows:

1. That with regard to the credit provided above, the Tenant/Complainant may take said credit by deducting from her rent due and owing beginning December 1, 2017.

IT IS FURTHER ORDERED AND DETERMINED, that the municipal attorney is hereby authorized to provide the Landlord, Sebastian Villa apartments, c/o Sebastian/Urban Renewal, LLC, 2305 West Bangs Avenue, Neptune Township, New Jersey 07753, and the Tenant/Complainant, Carolyn Sublett, 2305 West Bangs Avenue, Apt. 10B, 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/Complainant shall have a right within twenty (20) days of the date of receipt of this 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.

OFFERED BY BOARD MEMBER:

SECONDED BY BOARD MEMBER:

AND ADOPTED ON ROLL CALL BY THE FOLLOWING VOTES:

ROLL CALL

Affirmative:

Negative:

Absent:

Dated: November 2, 2017

JAMES MANNING, JR., CHAIRMAN

ATTEST:

PAM HOWARD, Secretary

I hereby certify the foregoing to be a true copy of the resolution adopted by the Neptune Township Rent Leveling Board at a meeting held on November 2, 2017.

ATTEST:

PAM HOWARD, Secretary

The resolution was adopted on the following vote: Manning, aye; Holmes, aye; Johnson, aye; McAphee, aye; Riley, aye;