FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

NELLEKE LANGHOUT-NIX FILE NO. H-81-008

from a decision of the Director of the Department of Construction and Land Use pursuant to Title 22, Subtitle II, Seattle Municipal Code (Housing Code, Ordinance 106319)

Introduction

The appellant appealed an order of the Director of the Department of Construction and Land Use (DCLU) dated August 7, 1981, which sustained a May 13, 1981, Notice of Violation for premises known as 2421-1st Avenue.

The appellant exercised her right to appeal pursuant to Section 22.206.230, Seattle Municipal Code (Section 4.23, Ordinance 106319).

This matter was heard before the Hearing Examiner on December 28, 1981. The subject appeal had been held in abeyance pending contemplation of dismissal by appellant's former counsel.

Parties to the proceedings were: appellant, pro se; DCLU by W. M. Woodward.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject property is located at what is presently known as 2421½-1st Avenue. The previous address was 2421-1st Avenue.

2. The development at issue is the New Latona Hotel, a tenant of the Glaser Building. The appellant, owner of the building, became manager of the hotel following the breaking of a lease.

3. The legal description of the property appears in the Order of the Director dated August 7, 1981, and is incorporated herein by reference.

4. The hotel was and is tenant occupied. Some rent is paid weekly and others monthly. Part of the clientele is transitory in nature.

5. On March 11, 1981, a tenant, Kepner filed a complaint alleging attempted eviction without just cause. This followed a March 10, 1981, Termination of Tenancy Notice from the appellant. On March 11, following a call from the Housing Mediation Service an eviction notice designed to supercede the previous notice was issued to Ms. Kepner, which notice was to indicate the good cause that was not stated in the previous document.

6. Kepner was renting rooms 11A and 11B, which units were not divisible. The unit has one entry door and was rented as one unit. Appellant also credibly testified that room 11A/B had more closet space as well as a special outlet that neither unit 9A nor 9B had. In further contrast, unit 9 is divisible into sections A and B with two entry doors.

7. On April 6, 1981, Kepner received a Notice of Unlawful Detainer. By letter dated April 11, 1981, Kepner complained to the Department of Construction and Land Use, citing the reason given for her eviction; that the appellant desired possession of the unit for appellant's son, and a lack of an equivalent unit when in fact on April 2, 1981, the appellant rented the units 9A/B; and further stating that those rooms were equivalent. The DCLU record of complaint is dated May 13, 1981, and was accorded Complaint No. 1-81-972.

8. The Notice of Violation dated May 13, 1981, cites 4.15B, Attempted to Evict Tenant for Other Than Good Cause

> a. Owner initiated unlawful detainer action against tenant on April 6, 1981, based on Notice to Terminate Tenancy dated March 11, 1981. March 11th notice stated owner sought possession of unit 11A-B for son and no substantially equivalent units were available on April 2, 1981, owner rented unit 9A-B a substantially equivalent unit to a new tenant showing that an alternate unit became available for owner's son before unlawful detainer action became necessary.

9. The August 7, 1981, Order of the Director Following Reconsideration of Notice of Violation noted a previous hearing on the Notice of Violation July 2, 1981, and sustained the Notice of Violation. However, also dated August 7, was a DCLU issued Limited Certificate of Compliance, which noted that conditions complained of were found to have been corrected.

10. Appellant asserted that as of the date of the unlawful detainer issued in April, unit 9 was not available. Appellant urged, as stated in her affidavit, that a Mr. Fox paid appellant $140 for rental of unit 9 through May 12, 1981, with efforts to be made at securing a sublessee; further, that on April 1, 1981, a Mr. Stephens sublet unit 9. Submitted as an exhibit was a receipt dated February 15, 1981, identified by appellant as for units 9A and B for a total of $140 which included a notation "will hold until May 12, 1981." Appellant's testimony continued that 9A was rented to a Mr. Dahl, but became vacant March 17, 1981. An affidavit of "Stephen Fox" was to the contrary and was also entered into the record. That affidavit stated that the rent for unit 9 was paid through February; that the affiant vacated the unit in mid-February; and that the affiant never paid any deposit for appellant to hold unit 9 available after having vacated the unit in February of 1981. No documentary or other evidence of record refuted appellant's testimony that unit 9 was rented to Stephens on April 1, 1981. The evidence predominates that unit 9 was not available as of the April notice to terminate issued to Kepner.

11. Appellant's affidavit further noted that

> ...Unit 11...is the only inferior double room in the entire building. It is the least desirable and the most difficult to rent. The other units are substantially different than Unit 11 and are of a higher quality. It is for these reasons that affiant wishes Unit 11 for her son since his occupancy will minimize the economic losses involved.

Conclusions

1. Owners may not evict or attempt to terminate the tenancy of any tenant except for good cause as provided in the ordinance. Section 22.206.150. One such reason constituting good cause per the ordinance is where: the owner seeks possession for himself or for a member of his immediate family, provided no substantially equivalent unit is vacant and available in the same building... Section 22.206.150(C)(4).

2. Based on the record, the subject Notice of Violation is reversed. The appellant sought possession of the unit for a family member as that is defined by the ordinance. Units 9 and 11 were not substantially equivalent. Though larger, unit 11 was considered less marketable. The units differ in divisibility, amenities and in other features. As to availability, the evidence predominates that unit 9 was not available as of the date of the issuance of the notice to terminate. It was not refuted that unit 9 was rented to a Mr. Stephens as of April 1, 1981. As to the unit's availability to Mr. Fox, the only evidence contrary to the applicant's direct testimony was the affidavit of "Stephen Fox".

3. Based on the items of record no double jeopardy was presented by virtue of the July 2nd hearing, so that the matter is properly before the Hearing Examiner. The interpretation of the assistant city attorney as to the applicability of the section is adopted.

Decision

The decision of the Director of the Department of Construction and Land Use is REVERSED.

Entered this 27th day of Jaunary, 1982.

Leroy McCullough
Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418(1977); JCR 73(1981). A copy of this decision shall be filed with the King County Division of Records and Elections.