FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

PAUL PATU FILE NO. H84001

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

Paul Patu appealed a May 4, 1984 Order of the DCLU Director which sustained a Notice of Violation dated March 30, 1984. The Notice alleged housing code violations at premises known as 4201 S. Brandon.

The appellant exercised his 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 May 22, 1984.

Parties to the proceedings were: appellant, pro se and by Pat Kennedy, Seattle Tenants' Union; and the DCLU Director by attorney Sandra Watson, code compliance officer.

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

Findings of Fact

1. The subject property is known as 4201 S. Brandon Street. The legal description follows:

> The west half of Lot 10 and all of Lot 11, Block 3, Hillman City Addition to the City of Seattle, Division No. 1, as recorded in Volume 10 of Plats, page 57, records of King County, Washington

2. The subject property is owned by appellant, who resides at a different address.

3. Appellant purchased the subject property in "1971 or 1972" and resided there for ten years. Relatives then assumed residency for approximately 1 year, terminating in "May or June of 1983".

4. In July and August of 1983, appellant began making purchases and entering into agreements designed to improve the subject property. In the record are receipts for plasterboard, lumber, roofing materials etc.

5. In December 1983, appellant permitted relatives to move into the subject property, as an alternative to use of emergency housing. This impacted appellant's work on the property. Appellant charged the occupants no rent, but the friendly agreement was for the occupants to pay for utilities. There was no specific arrangement as to repairs of the property other than the agreement that the occupying family would pay for repairs caused by their occupancy.

6. HUD inspected the subject property in January 1984 and conditioned inclusion in its program on correction of some roofing, heating system, plumbing and other problems. Appellant is contemplating sale of the subject property, possibly through a federal government program.

7. Sometime near March 1984, appellant's relatives voluntarily vacated the subject premises. To date of the hearing the house was locked up and vacant.

8. March 15, 1984, Department of Construction and Land Use Housing and Zoning Enforcement inspector Turner visited the property in response to a complaint. As no one was home, Turner left his card. An arrangement was subsequently made for Turner to inspect the property March 16, when Turner saw evidence of roof leakage, and other conditions as listed in the Notice of Violation. Turner testified that he say "no tangible evidence" of previous repair work.

9. As a result of the inspection, DCLU issued a March 30, 1984, Notice of Housing Code Violation which alleged violations in categories of:

1. Light and ventilation
2. Sanitation
3. Shelter (roof)
4. Maintenance (e.g. windows, floors, walls, ceilings)
5. Heating
6. Electrical system

The Notice included a correction deadline of April 30, 1984.

10. Appellant requested reconsideration. A DCLU hearing was held April 27, 1984. May 4, 1984, DCLU Hearing Officer Swanigan entered an Order sustaining (confirming) the March 30, 1984, Notice of Violation, except that the compliance date was extended to May 31, 1984.

11. By letter dated May 7, 1984, appellant submitted this appeal.

12. The matter came on for hearing before the Hearing Examiner on May 22, 1984. As to Violation category 1, appellant testified that (1) in August he fixed and painted around 6 broken windows, causing them to stick; (2) as to the category of inadequate sanitation, that (a) he was not sure whether the bathroom lavatory was still disconnected, (b) that the hot water heater had been busted by occupant - relatives, and that he had not been notified; and (c) that the kitchen plumbing and basement laundry sink drainage problems remain to be corrected.

13. As to the inadequate shelter (roof) category, appellant testified that a new roof was installed in August-September (1983).

14. Appellant denied the existence of broken windows although, he testified, one is cracked. Appellant testified further that he was continuing to work on the floor, wall and ceiling coverings as well as the other building components pointed out in the Notice category of inadequate maintenance.

15. As to heating, appellant testified that the heater in fact was disconnected because the occupant-family could not pay the bill. Repair remains to be done on the "disconnected and deteriorating ducting system," according to appellant. Work is also remaining on the electrical system, category 6.

16. Appellant essentially complained that City (DCLU) interference was unnecessary, and requested withdrawal of the Notice of Violation. In the alternative, appellant requested extension to November (1984) of the compliance date. Appellant offered no 1984 schedule of repairs, and testified that his circumstances prevented his doing so.

Conclusions

1. Section 22.206.230(B) provides that in Housing Code appeals:

> The Hearing Examiner's decision shall be made upon the same basis as is required of the... (Director of the Department of Construction and Land Use)... and may affirm, reverse or modify the (Director's) order; provided, that the (Director's) order shall be deemed to be prima facie correct and the burden of establishing the contrary shall be upon the appellant.

2. With limited exception, appellant has not disputed the "observed violations" per the DCLU Notice of Violation. Rather, the thrust of appellant's testimony went to the reasons for the property circumstances and the status as of the hearing before the Examiner. For example, appellant did not contest the allegation that no hot water system for bath or kitchen was provided at the subject site. Appellant testified that the container was broken by occupant-relatives without notice to appellant.

3. Appellant's testimony and evidence showed roof repair expenses to have been incurred in August-September of 1983. However, DCLU testimony was to the effect that roof leakage was evident during the March 16, 1984 inspection, previous repair expenses notwithstanding. Given the burden of persuasion, the conclusion is that the spring, 1984 roof condition inadequately complied with the shelter requirements of Seattle Municipal Code Section 22.206.070.

4. Further, while appellant denied that the living room east and north windows and the basement east window were broken, appellant testified that one was cracked. Section 22.206.080 requires that every "...door, skylight and window" be kept in a sound condition and good repair. No photographic evidence was presented showing the relative status of the window "crack." Based on the weight to be given the Director's order; and the evidence and testimony of record, the Director's order is sustained, although the record is clear that appellant has expended some time and effort to repair the subject property.

5. A review of Chapter 22.206 provided the Hearing Examiner with no basis on which to disagree with the Director's position that the critical issue is not payment or receipt of rent; rather, occupancy. Thus, the fact that appellant's cousins paid no rent is of considerably less impact than urged by appellant.

6. The remaining items relate to the compliance period and the appellant's request for an extension. Section 22.206.210 (B) provides that:

> The time set for compliance shall not apply to a building which is vacated and closed to entry within the period set for compliance, provided it is not reoccupied until the standards and requirements of Sections 22.206.020 through 22.206.160 have been met.

7. The Director's final order extended the compliance date to May 31, 1984. Appellant wished to have it extended to November 1984. A desire to minimize or avoid the DCLU quarterly inspection fee figured prominently in appellant's request.

8. Section 22.206.210(A) provides that in establishing a compliance date the DCLU Director shall consider the type of building hazard at issue, procedural requirements and "any other circumstances beyond the control of the responsible party." As part of the final Director's order, the compliance date presents as an appropriate item for Hearing Examiner review.

9. Referencing the time set for compliance, the code provides that the time:

> shall not apply to building which is vacated and closed to entry within the period set for compliance, provided it is not reoccupied until the standards and requirements... have been met (emphasis added).

Section 22.206.210(B).

10. The section specifically addressing the reinspection of vacated and closed buildings follows:

> 22.206.260 Reinspection of vacated and closed buildings.
>
> A. When a building has been vacated and closed to entry pursuant or in response to a final order issued pursuant to this chapter, the Superintendent of Buildings shall reinspect the building quarterly to determine whether the building remains vacant and closed to entry, and whether and the extent to which the condition of the building has deteriorated. An annual charge not exceeding the total cost to the city of the reinspections, and established by the Superintendent pursuant to Section 22.202.030 of this subtitle,shall be collected by the Superintendent from the owner or other person responsible for vacating and closing the building.
>
> B. If upon any reinspection the Superintendent of Buildings finds that the condition of the building has deteriorated to an extent that endangers or is injurious to the health or safety of the occupants of neighboring buildings or of the public, he shall commence proceedings in accordance with Chapter 22.208 of this subtitle.
>
> C. Any building which has been vacated and closed to entry pursuant or in response to a final order and which the Superintendent of Buildings finds to be open to unauthorized entry, is found

> and declared to be a public nuisance which the Superintendent is authorized to abate summarily by such means and with such assistance as may be available to him, and the costs of abatement shall be collected from the owner or other person responsible in the manner provided by law.

11. Read together, Sections .220 and .260, suggest that property subject to the Housing Code restrictions must be repaired within the compliance time-line, or vacated and closed. If vacated and closed, the time set for compliance is inapplicable; however, reinspections (at a cost to the property owner) to guard against unauthorized entry, use and injurious deterioration are authorized by the Code.

12. The Examiner is persuaded that appellant is making some effort to upgrade the subject property. Without a specific work plan, however, the Examiner is not persuaded that a 30 day compliance period (from the date of the final order) is unreasonable. In effect, appellant is being afforded April to July to resolve the problems with the DCLU Notice. Accordingly, the Director's order is affirmed except that the compliance date is extended to 30 calendar days from the entry of this order. The Examiner leaves for another appeal the question of when the quarter should commence for any "vacant and closed property" inspection by DCLU.

Decision

The Order of the Director is affirmed, except that the compliance date is extended to July 26, 1984.

Entered this 26th day of June, 1984.

Leroy McCullough
Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Akada v. Park 12-01 Corporation, 37 Wn.App. 221(1984); JCR 73. Should such request be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.

A copy of this decision shall be filed with the King County Division of Records and Elections.