

FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

WILLIAM Z. L. PETERSON

FILE NO. H-81-001

from an Order of the Director of
the Department of Construction
and Land Use pursuant to the
Housing Code, Ordinance 106319

Introduction

Appellant William Z. L. Peterson filed an appeal from an Order of the Director of the Department of Construction and Land Use (Director) regarding an alleged housing code violation concerning property located at 1614-32nd Avenue, Seattle.

The appellant exercised his right to appeal pursuant to Section 4.23 of the Housing Code, Ordinance 106319.

The parties to the proceedings were: Appellant, represented by Eric Richter, Skeel, Henke, Evenson and Roberts; and the Director represented by Clifford Hester, Manager, Citizen Complaints Section, Housing and Zoning Enforcement Division, Department of Construction and Land Use.

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 1614-32nd Avenue, Seattle, Washington. The legal description is stated in the Order of the Director, Department's Exhibit #8.

2. The subject building is a one-family dwelling that was purchased by the appellant in 1977. Following extensive repair and some remodeling, the house was first rented in 1978.

3. The house was rented to a Ms. Gleason pursuant to a rental agreement of March 9, 1979, Appellant's Exhibit #1. In the fall of 1979, Ms. Gleason was unsuccessful in her effort to get financing to purchase the subject dwelling. October 23, 1980, the defendant entered into an earnest money agreement with vendees Brozo and Butterfield. The week of October 16, the vendees had seen the house by arrangement with the tenant, Ms. Gleason. The "earnest money agreement," Appellant's Exhibit #2, provides in part:

"seller to notify tenants and property to be vacant at time of closing or as mutually agreed between seller and purchaser... This sale shall be closed on or before 11-7-80 by Commonwealth Title... buyer shall be entitled to possession on (closing) or as mutually agreed..."

4. By Notice to Terminate Tenancy dated October 30, 1980, the appellant notified Ms. Gleason that the tenancy was terminated on the 30th day of November, 1980, Department's Exhibit #1. The appellant gave no reason for the Notice to Terminate Tenancy. When the tenant called within a few days inquiring as to the reason for the termination of tenancy, the appellant simply advised the tenant that the house had been sold.

5. On November 7, 1980, the Director received a complaint filed by the tenant, Ms. Gleason. In response thereto, the Department issued Notice of Violation dated November 13, 1980, Department's Exhibit #2, stating that the "observed violations and required corrections are as follows:

1. Eviction without Just Cause Shown:

- a. Evicted or attempted to evict a tenant for other than good cause.

CORRECTION:

Rescind the eviction in writing to the tenant and send a copy to the Department of Construction and Land Use."

6. By letter of December 3, 1980, addressed to the tenant the appellant notified the tenant that the appellants were no longer owners of the subject property and that therefore they rescinded the notice of eviction "in compliance to the City's Just Cause Evictions."

7. Pursuant to a request for hearing received December 4, 1980, a hearing was held before the Director on December 17, 1980, at which the Notice of Violation was sustained. Department's Exhibit #8. The Order of the Director was received by E. Peterson on December 24, 1980.

8. A statutory warranty deed from the grantor(s) William Z. L. Peterson and Evelyn Peterson, husband and wife, to James K. Brozo and Elizabeth L. Butterfield, husband and wife, conveying the subject property was dated November 20, 1980. Appellant's Exhibit #3. Of the same date was a deed of trust from the vendees as grantor of the deed of trust to the vendors as beneficiaries. Appellant's Exhibit #4.

9. The purchasers have begun and are completing anticipated modification projects for the subject property.

Conclusions

1. Section 4.21 of Ordinance 106319 requires that the Director cause to be served and posted a Notice of Violation "stating separately each violation" of the Housing Code standards or requirements. The Director is also to indicate what corrective action is necessary for compliance. The subject Director's Notice of Violation shows eviction without just cause shown and as well as eviction for other than good cause. The corrective action suggested is the rescission of the eviction notice, not the amendment of the notice to include the reason for the termination. Therefore, under these circumstances, only one violation is dated separately with necessary corrective action as required by Section 4.21, i.e., evicting the tenant for other than good cause. To read the violation notice differently would be to subject individual property owners to vague statements of violations and corrective actions in contravention of Section 4.21.

2. Ordinance 106319, Sections 4.15 and 4.31 was amended by Ordinance 109219 (1980). Section 4.15B of Ordinance 109219 provides that an owner shall not evict or attempt to evict any tenant except for good cause. For purposes of this case, good cause may be established when 4.15B.4 "the owner seeks possession for himself..." and when 4.15B.6 "the owner seeks to do major reconstruction or rehabilitation in the building which cannot be done with tenants in occupancy."

3. The Superintendent's (Director's) order shall be deemed to be prima facie correct, Section 4.23, Ordinance 106319, and the burden of establishing the contrary shall be upon the appellant.

4. The preamble to Ordinance 109219 states that the evil designed to be abated is that of the arbitrary eviction of responsible tenants, which imposes upon such tenants the hardship of locating replacement housing without corresponding benefit to property owners. The ordinance specifically stated that the reasons for termination of tenancy listed in that ordinance and no others shall constitute good cause for evictions or attempted evictions. The transfer, sale or other conveyance of property by an owner is not included among the good cause elements of the ordinance.

5. Although the vendee had a legally enforceable interest in the property as of October 23, 1980, Cascade Security Bank v. Butler, 88 Wn.2d 777 (1977), we consider the title to have been transferred by the statutory warranty deed and the deed of trust, both dated November 20, 1980. This reading is consistent with the stated purpose of the provisions of the ordinance.

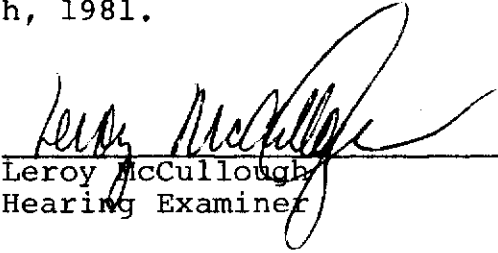
6. It is apparent that the appellant sought to evict the tenant to deliver possession to the vendee. However, again, this is not stated as an element of good cause under the ordinance. As of October 30, 1980, when the Notice to Terminate Tenancy was issued, the then legal owner was not seeking possession for himself nor was seeking to do major reconstruction in the building. We do not consider the vendor an authorized agent for the vendee who would be entitled or required to issue the notice of eviction to the tenant. We agree with the Director's response that the purchaser, upon obtaining title, could have terminated the tenancy in accordance with provisions of the ordinance.

7. However, we also recognize that the particular fact pattern at issue is one of first impression and in addition that the parties at hand did not appear as willful violators of the referenced sections of the Housing Code.

Decision

The Director's Notice of Violation and Order is REVERSED in part and AFFIRMED in part.

Entered this 11th day of March, 1981.


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; JCR 73 (1981).