

MINUTES OF THE CALDWELL RENT REVIEW BOARD

August 16, 2017

Meeting called to order **7:05PM**

Mr. Galante read the portion of the Open Public Meeting Act

ROLL CALL

PRESENT: Councilman Rodgers, Mr. San George, Mr. Galante and Ms. Kerrigan

ALSO PRESENT: Mr. Russo, Esq

ABSENT: Ms. Evans and Ms. Pemrick

Pledge of Allegiance

MINUTES:

February 15, 2017

Minutes of the Rent Review Board meeting accepted and approved.

CORRESPONDENCE:

Tenant Complaint from Ms. Pemrick and Ms. Zascone dated July 11, 2017. Tenant Complaint from Ms. Carpenter dated July 13, 2017. Tenant Complaint from Mr. Lang dated July 14, 2017. Complainants' attorney letter dated August 8, 2017.

NEW BUSINESS:

Complaint from Ms. Pemrick, Ms. Zascone, Ms. Carpenter and Mr. Lang, 512 Bloomfield Avenue, Caldwell, NJ.

7:10PM Recess

7:22PM Roll Call

Councilman Rodgers, Mr. San George, Mr. Galante and Ms. Kerrigan

Ms. Pemrick, 512 Bloomfield Avenue testified that she would like to make a motion to request an adjournment. They are requesting this adjournment because more tenants are coming forward to indicate their complaints and we are aware of at least four more complainants which will be submitted within the next week. There is a need to compile all of the complaints to one document for efficiency and clarity so that neither side, the tenants and the landlord, waste the Board's time.

Mr. Gordon, representation for Mr. Legow objects to any adjournment without the great expense of witnesses here tonight to testify on the only complaints that have been filed. Right now we know what has been articulated in the complaints and we are here to address them.

Ms. Pemrick asked what procedures the Board is following because the letter that went out to the three tenants did not specify whether this was the initial hearing or whether there would be a hearing with expert witnesses. The tenants object if this is the initial hearing there was not sufficient time from the time we received the lawyer's response to prepare our witnesses. The letter that went out is unclear that this is a hearing.

Mr. Russo advised the Board that it is up to them if they want to hear the testimony of who is here and obviously a decision would be made if there is going to be further testimony or further response by the tenants.

Discussion continued on the letters that were sent out to the complainants.

Ms. Pemrick feels that it is unclear as to whether this is a hearing or it's the initial meeting of the Board to declare whether the complaint is sufficient to have a hearing. When Lynn Borrow made a complaint to the Board regarding the parking spaces issues this Board did not have a hearing and Lynne Borrow and her partner were not here. At that time we decided whether we could hear the complaint, the merit of the complaint and the Board decided that we couldn't hear it for such reasons that she won't go into.

Mr. Galante responded that the only basis that he can see for dismissal is the part in the ordinance that states you have 30 days to respond. Ms. Kerrigan responded that they have 14 days to respond.

Ms. Suzanne Pemrick responded that in the ordinance 182-15 it reads that "the landlord shall, at least 14 working days prior to said hearing date, notify each tenant thereof and serve a copy of this application upon each tenant affected thereby".

Mr. Gordon responded that what Ms. Pemrick is reading is when a landlord is seeking additional rent increase or a service increase or service charge or a major capital improvement it is not under the maintenance of services section where the Board's secretary sends a notice of the hearing. The Board secretary served a notice of the hearing upon us and upon the two tenants that are sitting here. They know they are here for a hearing, they came here for the hearing and we are all here so we should go forward.

Ms. Zascione responded that they did not know that this was going to be the actual hearing based on the letter that we received. She was under the same assumption that you were going to base it on the merit of the complaint instead of hearing it and all parties would have to be asked to be present.

Mr. Galante responded that he understands the confusion based on the past but as he can read the "The Rent Review Board will be hearing this complaint on August 16th" to him it would think to appear to anyone involved.

Mr. San George read from the ordinance "the Rent Review Board Secretary shall serve a true copy of the complaint upon the landlord with a written notice scheduling a hearing and shall simultaneously serve the written notice scheduling the hearing upon the complainants". This letter states the Rent Review Board will be hearing this complaint on August 16, 2017 at 7PM.

Motion was made to hear the three complaints that are eligible to be heard this evening by Mr. San George, seconded by Ms. Kerrigan. All in favor.

Complainants - Ms. Pemrick and Ms. Zascione were sworn.

Legow Management - David Legow, Robert Patel, John Bone, Donald Legow, Alan Cogen, Margaret Acme and Brian Alderman were sworn in.

Mr. Gordon, Attorney questioned the fact that Ms. Pemrick is a member of the Board and if she has the ability to bring a complaint before the Rent Board. Mr. Russo responded that as far as his stand point you don't give up your rights as a tenant when you join the Board.

Ms. Kerrigan agreed with Mr. Russo and Mr. San George stated that he feels completely comfortable and neutral in whatever decision he would make.

Ms. Pemrick gave a few details of the history to her complaint as to help the Board understand.

Mr. Gordon objects to any testimony that goes back to events that occurred 15 years ago as being irrelevant to the issue that's before this Board.

Mr. Galante responded that the Board members have received the information and have read the background so if we can just keep the matter to the June 30 – July 3, 2017.

Ms. Pemrick continued with her testimony the issue in these complaints is the Capital Improvement surcharge in 2003 for improvements of windows, water proofing and anew chiller cooler tower this percolated through the courts and the courts denied this on the grounds that it constituted Maintenance and it did not constitute improvements. In 2006 when a final decision was reached supporting the Town the attitude of Legow Management Corporation changed from doing necessary preventive maintenance and repairs to band aids. This complaint is filed under section 182-17 of the Rent Ordinance "Landlord shall maintain the same standard of service and maintenance...as the landlord provided or was required to provide by law or lease as of the date of tenancy was created".

Mr. Gordon objects Mr. Chairman asked that we focus on the June 30 – July 3 and now we are not focusing on this.

Ms. Zascione responded that she thinks what Ms. Pemrick is trying to do is lay the ground work. Since the 2010 complaint, which was denied by this Board and was never remediated, the condition of the air conditioning situation seasonally has continued for the past eight years. So while to show the Board who did not support that complaint at the time neither did the landlord do anything to remedy the situation which has repeated itself multiple times every season and since this complaint was written we have had four more incidents.

Ms. Pemrick continued to read her complaint.

Mr. Galante asked Ms. Pemrick on May 15th the air was not working and on May 17th it was turned on but then turned off the same day and Ms. Pemrick responded yes. Mr. Gordon responded that they will have their witnesses explain it.

Ms. Pemrick continued to read her complaint.

Ms. Pemrick testified about hot water and it doesn't affect her but it does other tenants.

Mr. Gordon objects to other tenants who are not here and he cannot cross-examine and where it doesn't affect this tenant.

Mr. Gordon questioned Ms. Pemrick.

Mr. Gordon responded that he has seen the manager's log and he doesn't see her name saying anything about the air conditioning in 2017 and she responded that she might not always go into the log and might have called.

Ms. Zascione objects to some of the assertions that the Attorney made the fact that people re-sign a lease every year.

Mr. Galante responded that according to the landlord's statement and he asks Mr. Gordon if they have repair orders from June 30th – July 3rd and Mr. Gordon responded that they were there for 22 man hours on July 1, 2 & 3rd fixing the air conditioning. The complaint came in at 7:00AM on July 1st and the contractor was there at 9AM addressing the problem. It was up and running later that day which was the Saturday and over Saturday night it went down again. They did come back on Sunday and worked on it, got it up and running immediately and it stayed up and running since then except for it

had to be recalibrated and reworked. They have witnesses to testify. Under the law after you get a notice we have to respond appropriately and reasonably.

Ms. Pemrick asked Legow Management if they have a mechanism where you will be automatically informed if the air conditioning fails. They are depending on tenants to notify them on the weekend. Mr. Galante asked if a superintendent lives on site and Mr. Gordon responded yes. Mr. Galante said wouldn't it be the superintendents responsibility. Mr. Galante said he read that window fans are not allowed and Mr. Gordon responded yes.

Ms. Zascone testified that if a landlord provides in a lease that we are given air conditioning and we are prohibited also in the same lease to provide ourselves with air conditioning units in windows or fans so this means our hands were tied as far as climate control during the warm seasons to completely on central air conditioning provided by the landlord. Since this is the choice of the landlord for the building that he owns this leaves us at their mercy always. If she can't have the services that she is supposed to be provided with in her lease then she feels the landlord is not living up to his responsibility.

Mr. Gordon responded that this building is 50 years old and you can't expect that every minute of every day that everything is going to be working 100% and it is unreasonable to expect that and assume that and to seek any kind of remedy from this Board when things occasionally have a problem and they need to be addressed.

Mr. Gordon questioned Ms. Zascone.

Mr. Gordon asked Ms. Pemrick if she brought a complaint to the Board in 2016 for the air conditioning and Ms. Pemrick responded no, we didn't. He continued did you bring one in 2015 and Ms. Pemrick responded no, we did not.

Mr. David Legow, Principal of Legow Management testified that Carlyle Towers is a 106 unit High Rise Building in Caldwell. The building was built in 1965. The building is a luxury building that is very well managed. A lot of money has been spent on the air conditioning and heating they have done six risers out of twenty-four. We have replaced the fan cooling unit, the piping; they put in the state of the art unit that is controlled in the apartments. Ms. Zascone has three new fan coils in her apartment. Mr. Legow explained how the fan cooling works. He also explained all the upgrades that they have made in the building. The system is being monitored the Superintendent, Director of Maintenance and the Regional who goes from building to building receive text and emails when there is a problem. The problems are usually not seen until it gets hot. Discussions ensued on the upgrades made in the building.

Ms. Kerrigan asked when they will be going back to working on the fan cooling and Mr. Legow said he would like to get back in doing that but he has a couple of pressing things. What they have done has helped the system.

Ms. Zascone explained to the Board that the only reason they did the risers that he is referring to is the line that goes from the 1st floor to the 9th floor which is a letter line. At some point they made a decision to renovate the downstairs area that use to be the apartment for the rental agency is now the lounge, office and Gym that was the reason they did those risers. There were only two apartments that were done from that letter line. That was four years ago. All the other renovations are cosmetic.

Ms. Pemrick addressed the Board asking for them to have an expert examine the air conditioning unit and determine if he has gone beyond its use for life. Mr. San George responded that the Board cannot pay for an expert.

Mr. John Bone, Director of Maintenance Operations gave a summation:

- Mr. Bone is familiar with the Heating & AC at Carlyle Towers and has been the Director of Maintenance Operations since 2000.
- The system is a hydronic system that's all water.
- When switching from heat to air conditioning you have large valves 10" that need to be open and closed.
- Maintenance for Chiller is done in late April to be ready for May.
- In May there are still some cold nights.
- 50 degree water circulates.
- There are two parts of your chiller you have the evaporator side which is the chill water inside the apartments. You have the condenser side which is your cooling tower.
- There were issues with the cooling tower causing the chiller to go off.
- The fan wasn't running and when that fan is running it cools your condenser water down. The condenser water needs to be somewhere around 80 to 82 degrees for the system to run properly.
- When it goes up past 82 degrees it will knock the chiller off which is the unit in the basement.
- The fan is 25 years old and is maintained every year.
- The motor has been replaced five years ago; the VFP that controls it was replaced in late September, 2016.
- In 2016 there was an issue in the tower which had to do with the water level. It was an electronic automatic feed that fills the tower up and they had an issue with that.
- There were different components that went on this same unit.
- There are 10 units and 6 of the units were down and 4 were running but not sufficiently.
- The 4 units cooled the system but did not cool it to the maximum that it could.
- The unit was running when the first call went out.
- The tower is in good condition and is being maintained.
- Every April Sanders Mechanical they send a crew for preventative maintenance that works on the cooling tower and the chiller. They do the power washing they check motor, blades and belts. They put it all back together and run it automatically and the run it manually.

Mr. Galante asked Mr. Legow what would prevent him from permitting on a case by case bases window air conditioning and Mr. Legow responded that there are issues on how they are secured, they can fall out of the window, cause damage to the window, and it's leaving the windows open causing humidity. He has been told that it takes four times electricity to get rid of humidity then it does hot air.

Ms. Pemrick asked Mr. Bone on May 15th when you turned it on was that just a trial run to see if it worked or was it intent that it would be functioning and Mr. Bone responded that he doesn't recall that day.

Ms. Pemrick testified that the question before the Board is not whether they are maintaining it or at some point is this system beyond it's us for life and should the entire system be replaced.

Mr. Alan Cogen, Regional Superintendent was questioned by Mr. Gordon.

Mr. Cogen was on call July 1st because the superintendent was on vacation so he took the emergency call and they started on that morning around 7AM. He contacted Sanders Mechanical and spoke to a mechanic and they would meet him at the Carlyle in an hour. Sanders mechanic was there at 9AM.

Ms. Zascione testified that they had already lost the air on the 30th and she didn't want to call in the middle of the night.

Mr. Bob Patel, President of Sanders Mechanical was questioned by Mr. Gordon.

Sanders Mechanical services primary industrial and commercial units. Sanders Mechanical has been providing service to Legow Management for over 40 years. Mr. Patel testified on what caused the system to stop working.

Exhibit

A -1 Sanders Mechanical work orders

Mr. Patel testified that there were fourteen (14) hours over the weekend and eight (8) hours on Monday. On July 1st there were six (6) hours at time and a half and on July 2nd there were four (4) hours twice that day at double time. On Monday there were eight (8) hours at regular time.

Exhibit

A-2 Chart of System

Mr. Patel explained the chart to the Board.

Mr. San George asked when Sanders Mechanical was contacted on July 1st and Mr. Patel said he was contacted at 7AM and at 9AM they were at the Carlyle building.

Ms. Margaret Acme, Maintenance Consultant was questioned by Mr. Gordon. She deals with work orders, the residents and she manages the building. Ms. Acme lives on site. Brian is the superintendent and when she receives anything from the tenants whether by email, phone or website she contacts Brian. Once the complaint has been addressed the tenant is notified by email.

Ms. Zascone responded that the communication is not the issue.

Mr. Russo asked if there has been further work done the property since this last invoice of the 3rd. Has Sanders been out again. On August 2nd there was a storm where lightening strike and caused a surge. It was determined that the controller wasn't working but they did get it running. They ordered a new controller which was overnighed and was received on Saturday. Since the unit was running and the temperatures were lower they decided to work on it Monday and notices were sent out to the tenants that it would be out for that day.

Board Members discussed the complaint.

Mr. San George went over chapter 182-17 Maintenance of Services. The laws of the habitability requirement are not for air conditioning it relates to heat.

- (a) Whether the condition complained of is true.
Yes he thinks it is clear there was no air conditioning for a certain period of time which was anywhere from 11:00PM on the 30th through the 2nd.
Whether it substantially affects the habitability of the premises; again not having air conditioning is not habitability.
- (b) When the condition first occurred; we heard the testimony about the timing of it.
- (c) The duration of the condition; this was until the 2nd.
- (d) Whether the landlord took corrective action within a reasonable time; after the notice of condition came in around 7:15AM on July 1st and corrective action was immediately taken and in fact the HVAC Company was present at 9:00AM and began work at which point the landlord incurred overtime labor charges for at least two days.

(e) Whether the condition violates any provision or standard as set forth in any of the Borough's applicable codes; Paul Milani appears to be no and he has heard no testimony otherwise. Mr. San George weighed all these factors and he believes that the tenants testified that it was out and he feels in these circumstances the response was immediate to notice and apparently effective at least for now.

Mr. Galante testified that he is sympathetic to the issues but after hearing everything the diligent fast response, the nature of the problems and how they are being addressed. He feels the landlord did all they could to rectify in a timely manner.

Ms. Kerrigan testified that she too is sympathetic to the tenants because in reading over the lease all the responsibilities in a sense are placed on a tenant and the only thing a landlord has to do according to the lease is to warrant habitability of the apartment. In her opinion the landlord did respond in a timely manner.

Mr. Galante made a motion to dismiss the Ms. Carpenter's complaint regarding the cooling issue of June 30th – July 2nd, seconded by Ms. Kerrigan.

Mr. San George	yes
Mr. Galante	yes
Ms. Kerrigan	yes

Mr. San George made a motion to dismiss Ms. Pemrick and Ms. Zascone complaints regarding cooling issue from June 30th – July 2nd, seconded Ms. Kerrigan.

Mr. San George	yes
Mr. Galante	yes
Ms. Kerrigan	yes

The meeting adjourned at 9:39PM

Respectfully Submitted,

Lisa O'Neill
Rent Review Board Secretary