The 2004 Law Suit
December 2015

A short while ago there was a minor hubbub about tenant petitions filed in 2004 against the management of 3003 Van Ness that was recently decided by the City. A copy of that decision is available HERE. A number of claims were made about the decision including that it gave thousands of dollars to members of the tenant Association Board of Directors that should have gone to all of the tenants.

Reading the decision, it is quite clear that none of this is true. However, I am a lawyer so it is fairly easy for me to read these decisions and make sense of them. What I would like to do here is to try and explain what happened based almost entirely on the decision but also based on talking to some of the people that were involved back in 2004 and reading the four volumes of the file from the critical 2007 year.

The law in 2004 was that a properly registered building manager could file every year to increase the rent ceiling for an apartment (and thus the rent) by a regulated amount.[1] In 2004, a tenant who received a rent increase (it was Brian Lederer) happen to also be a landlord/tenant lawyer. He did extensive investigations and found that the building manager was not properly registered and therefore the rent increase was not properly made. At the end of September, 2004, Mr. Lederer filed a petition with the Rent Administrator in the Rental Accommodations and Conversion Division within the Department of Consumer and Regulatory Affairs (RADC).

A month later, the Van Ness South Tenants Association (formed before the West Wing was built) filed a similar petition on behalf of the tenants in the apartment building that was signed by the entire Board of Directors of the Association. It is that case that we discuss here. In December of 2004 the building management finally registered[2]. In 2007 the two cases were consolidated.

[1] Now the law is different. There are no rent ceilings, but rent increases are still limited. More on that in an upcoming paper.

[2] It is far from clear, however, that the Building Manager (an out of state corporation) was properly registered to do business in DC until 2014.

The building responded that the Tenants Association had no standing (right) to sue on behalf of all of the tenants. In May 2005, additional individual plaintiffs were added to the petition that were members of the Association board of directors in case the building won on the point of the Association not being able to sue. [I have been told that the other members of the association were solicited to join the action but were not willing to tangle with the building management. Also, anyone could have filed a separate petition based on the work already done by Mr. Lederer and the attorney for the Association and it would most likely have been consolidated with the other petitions so that there would be few separate legal fees.]

The case was assigned to a person in RADC for adjudication but she became seriously ill and everything was postponed. The case seems to have fallen to the bottom of the pile of whoever picked up her case load. In October 2006, all of the rental housing cases were transferred to the fairly new Office of Administrative Hearings (OAH). This particular case, however, was not transferred until March 2007. OAH hears cases from more than 40 different city agencies boards and commissions and had no particular expertise in rental housing.

In 2007, there were hearings by OAH. It applied the rules in effect then that were substantially similar to those in effect in 2004. For the tenant association to represent all of the tenants it needed written authorization from more than half the tenants and the hearing examiner gave the association only four or six weeks to gather the 333 signatures needed. He also delayed compelling the building from telling the association the names and phone numbers of the tenants that would have helped a lot. Volunteers got the necessary signatures (sample HERE), although it took an extra four weeks but there were all sorts of procedural delays anyway so that probably did not matter. Instead of ruling on if the Tenant Association was allowed to be a party, there was no decision at all on this issue until early in 2011.

In March 2011, the City Council Committee on Public Safety and the Judiciary held a hearing on the huge backlog at OAH and OAH started "Operation Clean Slate" to clear up the backlog. pdf is HERE. This seems to have had an immediate effect and in July 2011 the OAH found that the Tenants Association was not a proper party and could not bring suit on

behalf of all of the tenants[3]. The individual plaintiffs were still in the suit, but for practical purposes the Association (and thus almost all of the tenants) lost. Shortly thereafter, three of the plaintiffs settled with the building. One of the plaintiffs had already died and her estate did not file the proper papers so she was dismissed. That left only three plaintiffs.

In October 2012, the case was finally heard. However, a decision did not come down until almost 3 years later in April 2015. [No money has yet been paid. The decision will be appealed by the building management. It is likely that it will be years before a final adjudication is made and years more after that before any money is collected.] The decision found that the building had not properly registered until December 2004 and thus the rent increases were invalid and could not be used as a new base rent for each unit. As a result, there were over charges of hundreds of dollars per month during the period under review (there is a three-year statute of limitation). Because all subsequent rent increases were based upon the invalid base rent, they also had to be refunded by the amount of the overcharge, This added up to a substantial amount of money that the tenants were overbilled for more than a decade and therefore a substantial amount of refunds.

So, the Tenants Association lost the case four years ago and with it any chance of a general refund for residents who had rent increases back in 2002-2004. After 13 years, three of the tenants may (years from now) get some of the money they were overbilled. There is no basis for saying that anyone got money they did not deserve (except the building) and Mr. Lederer deserves congratulations rather than aspersions. The building management may be a little more cautious in overcharging its tenants because he stood up to them (more on that in another paper).

In any case, thank you Brian

-Gabe Fineman W1131

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[3] The decision is HERE. The examiner did not consider if the names were late. Instead, he ruled that the OAH procedures to determine if a tenant association can represent its tenant members had changed in January 2011 and he used his discretion to apply the new rules and not the old rules. Under the new rules, the claim raised and the relief requested must not require the participation of any member of the association. That is, the association must be able to prove the claim and fashion the relief without regard to the circumstances of any particular tenant. Good if the complaint was failure to curb rats or not disposing of trash. Not good for overcharging rent because each tenant was overcharged a slightly different amount, the hearing examiner dismissed the Association from the case. It was now far too late to add more of the tenants individually.