

NEPTUNE TOWNSHIP RENT LEVELING BOARD - AGENDA NOVEMBER 2, 2017 - 6pm

James Manning, Jr. calls the meeting to order and requests the Secretary to call the roll:

ROLL CALL:

James Manning, Jr. _____ Morrel Massicot _____ Connie Holmes _____

Ruth Johnson _____ Catherine McAphee _____ Alternate #I Jeff Klein _____

Alternate #II Naomi Riley _____

Flag Salute

Chairperson Manning announces that the notice requirements of R.S. 10:4-18 have been satisfied by the publication of the required advertisement in The Coaster on January 12, 2017 posting the notice on the Board in the Municipal Complex, and filing a copy of the said notice with the Municipal Clerk.

Consumer Price Index [September's price index was 270.059, area prices up 0.5 percent over the month and 2.17% percent over the year]

Action Items:

1. Approval of Minutes – October 12, 2017.

Offered by: _____ Seconded by: _____

Vote:

Manning _____; Massicot _____; Holmes _____; Johnson _____; McAphee _____;

Klein _____ Riley _____

2. Resolution Carolyn Sublett, 17-1 vs Sebastian Villa

Offered by: _____ Seconded by: _____

Vote:

Manning _____; Massicot _____; Holmes _____; Johnson _____; McAphee _____;

Klein _____ Riley _____

DISCUSSION ITEMS:

PUBLIC PARTICIPATION:

ADJOURNMENT (Time): _____

Offered by: _____ Seconded by: _____

Vote:

Holmes _____; Manning _____; Massicot _____; Johnson _____; McAphee _____;

Klein _____ Riley _____.

Minutes – October 12, 2017

Chairman Manning, called the meeting to order at 6:05 pm and requested the Secretary to call the roll. The following members were present: James Manning, Jr, Morrel Massicot, Connie Holmes, Ruth Johnson, Catherine McAphee; Alternates Jeff Klein and Naomi Riley.

Mr. Manning announced that the notice requirements of R.S. 10:4-18 have been satisfied by the publication of the required advertisement in The Coaster on January 12, 2017 posting the notice on the Board in the Municipal Complex, and filing a copy of the said notice with the Municipal Clerk.

Mr. Manning announced that the Consumer Price Index [August's price index was 268.657, area prices up 0.2 percent over the month and up 1.7% increase over the year]

APPROVAL OF MINUTES

Mrs. Holmes offered a motion to approve the minutes of the meeting for **June 1, 2017**, moved and seconded by Mrs. McAphee. Mrs. Holmes, Mrs. Johnson, Mrs. McAphee and Mr. Klein all were in favor. The remaining members were ineligible to vote.

Mrs. Holmes offered a motion to approve the minutes of the meeting for **August 3, 2017**, moved and seconded by Mrs. Riley. Mr. Manning, Mrs. Holmes, Mrs. McAphee and Mrs. Riley all were in favor. The remaining members were ineligible to vote.

HEARING - CAROLYN SUBLETT VS SEBASTIAN VILLA

Present at the hearing were Carolyn Sublett who resides at 2305 West Bangs Avenue Apt 10b and representatives of Sebastian Villa - Jacqueline Locasto, Community Manager, Thomas Lee, Superintendent and Kellie Harris, Assistant Manager.

Mr. Anthony went over reduced services that allowed the board to review the complaint for this evening. He discussed jurisdiction and stated a motion was needed to determine jurisdiction.

Mr. Klein questioned whether the Board's jurisdiction was limited as to the amount of what the tenant pays.

Mr. Anthony stated no you would reduce it at whatever the tenant is paying even though it is subsidized.

Mr. Klein asked the Community Manager if Ms. Sublett was current with her rent.

Ms. Locasto confirmed that she was.

Mr. Manning announced that Alternates could have input but could not vote this evening because all regular members were present.

Mrs. Johnson offered a motion that the board had jurisdiction to hear the matter, moved and seconded by Mr. Massicot; all were in favor.

Ms. Sublett stated when she rented the apartment it was not ready.

Ms. Locasto stated when Ms. Sublett moved in she was not employed by the company but Ms. Harris the Assistant Manager and Mr. Lee were.

Ms. Sublett provided testimony on the odor from her neighbors apartment. She stated she placed a call to the police for a health check on her neighbor. The odor was coming from his apartment and was first noticed on May 1, 2017 but became severe on August 14. It intensified once the tub was removed and the wall was opened up. It stopped around September 15th.

Mr. Lee stated she informed him the tub was backing up. He opened up the wall and called a plumber to break the bricks. She received a new tub that Saturday. He stated she complained about an odor but they didn't find anything. It was the same day she called the police. He stated he had to fix the neighbors pipes as well because they were connected.

Mr. Klein asked Mr. Lee whether he was present before Ms. Sublett moved in and were inspections done and did problems exist before she moved in.

Mr. Lee stated he inspected the apartment, painted them and updated everything. He stated basically everyone gets new units but everything happened after she moved in.

Mrs. Holmes questioned whether the tub was painted.

Mr. Lee confirmed that it was glazed and when it went bad they took care of it.

Mrs. Riley stated there were cosmetic changes but questioned whether there was a problem with the tile.

Mr. Lee stated when the tub went bad some of the tile had to be ripped off the wall. He stated Ms. Sublett was putting tape on the tile and it pulled the tiles off the wall. He stated he had to rip the tub out to put a new one in. He stated Mrs. Sublett agreed to wait and have the tile replaced then she changed her mind.

Ms. Sublett stated that was incorrect but she was able to use the bathroom and no utilities were lost.

Ms. Riley questioned whether they had a work order form.

Mr. Lee stated he had a work order dated September 7, 2017 for the drywall.

Ms. Sublett stated she noticed the water coming from the air conditioning opening in April. She stated she informed them by letter that every time it rains the water comes in.

Kellie Harris, the Assistant Manager stated she never saw the correspondence.

Mr. Lee stated he only was notified when she experienced problems regarding the tub.

Ms. Sublett stated she sent certified letters.

Ms. Sublett stated the sink in the bathroom and kitchen both were clogged.

Mr. Lee stated this happened when she first moved in and it was fixed within three days.

Ms. Sublett stated that the walls were improperly tiled and they were not level. She passed around exhibits. She stated everything was still like that tonight. Ms. Sublett also stated the trench was filled in with cement. She stated water was leaking into the hallway and inside the bathroom and the hole in the wall was still there.

Mr. Massicot asked if she pointed out these problems prior to moving in.

Ms. Sublett stated she did as far as the water spots.

As far as the grab bars Ms. Sublett stated she did not have them for a month and a half.

Mrs. Johnson questioned whether it was mandatory to have grab bars.

Ms. Sublett stated she did not use them but she did not have them for three weeks. She stated waste was flowing down the trench for two weeks and the floor of the bath tub water was coming from the other apartment bathroom.

It was decided that the bathroom wall was part of 2 & 3's complaint.

Ms. Sublett stated she needed clarification as to whether or not she was in Apartment 10B or 4C.

Kellie Harris stated Ms. Sublett was offered 4C and was called several times to let her know how much her security and rent deposit would be for that month. She stated Mrs. Sublett did not have her security deposit so they waited for three weeks before she came in with her security deposit and in between that time someone else was given the apartment. She stated she believed Ms. Sublett was homeless or leaving her home at the time so they gave her 10B and that was why there was a different name on the C/O.

Mr. Anthony broke down the complaint to seven basic things and asked Ms. Sublett the status of them to which she replied.

1. Odor issue - improved
2. Wall covered issued - resolved
3. Clogged sink - resolved
4. Air Conditioner – not resolved because it leaks when it rains
5. Tile issue – not resolved
6. Grab Bar – replaced and corrected
7. Trench - corrected

Two out of seven have been resolved.

Ms. Sublett stated she would like to tile the bathroom herself.

Ms. Locasto stated they offered to tile her entire bathroom and at first she agreed and then she changed her mind and now she's not happy.

This portion of the hearing was closed and there wasn't any additional testimony.

Mr. Klein suggested Mr. Lee get a work order and fix the air conditioner and not wait for it to rain.

The Board began their vote on whether there were significant deficiencies.

Mrs. Holmes offered a motion that the odor was not a significant deficiency, moved and seconded by Mrs. Johnson and the vote was as follows: everyone was in favor of it not being a significant deficiency with the exception of Mr. Manning who felt it was.

Mr. Manning offered a motion that the holes in the wall were a significant deficiency, moved and seconded by Mr. Massicot; all aye.

Mr. Manning offered a motion that the clogged sinks were a significant deficiency, moved and seconded by Mrs. Holmes; all aye.

Mr. Manning offered a motion that the air conditioner was a significant deficiency, moved and seconded by Mrs. Johnson; all aye.

Mr. Manning offered a motion that the improper tiled wall was not a significant deficiency, moved and seconded by Mrs. Holmes; all voted aye.

Mr. Manning offered a motion that the grab bars were a significant deficiency, moved and seconded by Mrs. Johnson; all voted aye with the exception of Mrs. Holmes.

Mr. Manning offered a motion that the trench was a significant deficiency, moved and seconded by Mrs. Johnson; all voted aye.

The Board began their vote as to whether or not the landlord responded within a reasonable amount of time to the complaints listed.

Mrs. Johnson offered a motion moved and seconded by Mrs. Holmes that the landlord acted in a reasonable time in regards to the holes in the bathroom wall to prevent any further damage; all voted aye.

Mrs. Johnson offered a motion moved and seconded by Mrs. Holmes that the landlord acted in a reasonable time in regards to the outside wall; all voted aye.

Mr. Manning offered a motion moved and seconded by Mrs. Johnson that the landlord acted in a reasonable time as far as the clogged sink; all voted aye.

Mr. Manning offered a motion, moved and seconded by Mr. Massicot that the landlord acted in a reasonable time but noted both parties gave conflicting testimony and advised the representatives for the landlord that this matter still needed to be corrected within a reasonable time and to not wait until in rains; all voted aye.

Mr. Manning offered a motion, moved and seconded by Mrs. Johnson that the landlord acted in a reasonable time as far as the grab bars; all voted aye.

Mr. Manning offered a motion, moved and seconded by Mr. Massicot that the landlord did not act within a reasonable amount of time as far as the trench near the bathtub; all voted aye.

Mr. Manning offered a motion that he felt there was value on the trench around the bathtub and the value should be based on 2% of the amount of rent she pays based on the time frame of August 14-September 30, moved and seconded by Mrs. Johnson; all voted aye.

DISCUSSION ITEMS

There were none

PUBLIC PARTICIPATION

There were none.

Mrs. Johnson offered a motion to adjourn the meeting moved and seconded by Mr. Manning; All were in favor.

Pamela D. Howard
Secretary

RESOLUTIONS

RESOLUTION OF THE NEPTUNE TOWNSHIP RENT LEVELING BOARD OF TENANT’S COMPLAINT OF CAROLYN SUBLETT

WHEREAS, the Neptune Township Rent Leveling Board was presented with a Complaint by Carolyn Sublett, residing at 2305 West Bangs Avenue, Apt. 10B Neptune Township, New Jersey, a/k/a Sebastian Villa Apartments, alleging reduction in services in violation of Section 4-30.9, entitled, “Standards of Service” of the Neptune Township Rent Control Ordinance, and sought relief as a result thereof; and

WHEREAS, a hearing on the Complaint was scheduled and heard on October 12, 2017, after service was made upon the Landlord by Certified Mail/Return Receipt Requested, at Sebastian Village Apartments, c/o Andrew Phillips, 2305 West Bangs Avenue, Neptune Township, New Jersey 07753, and received by the Landlord on September 18, 2017, as submitted by Carolyn Sublett, within the time period prescribed by local ordinance; and

WHEREAS, on October 12, 2017 the Complainant, Carolyn Sublett, (hereinafter referred to as the “Tenant/Complainant”) appeared before the Neptune Township Rent Leveling Board and testified before the Board. Jacqueline Locasto, Community Manager; Thomas Lee, Superintendent and Kelly Harris, Asst. Manager, appeared on behalf of the Landlord, and testified and acknowledged service and receipt of the Complaint in this matter; and

WHEREAS, the Neptune Township Rent Leveling Board, per the aforesaid Complaint and testimony of the Tenant/Complainant, received the following information, grievances and requests for relief:

1. That the Tenant/Complainant, since moving into the subject premises on or about February 28, 2017, at a subsidized rent of \$216.00 per month, lives in a 171 unit elderly apartment community consisting of Section 8

rental assistance for 100% of the community's units via HUD's Rental Assistance Demonstration Program, which provides rental subsidy and additional housing security for the community's elderly tenant base, and is therefore characterized as a project-based federally subsidized project, for which the contract rent is \$1,191.00, of which the Tenant/Complainant pays \$216.00, and the balance of \$975.00 is subsidized. The Tenant/Complainant complained of the following deficiencies since entering the subject property based on the Complaint in this matter and testimony:

- a. Water coming into apartment from neighbor's apartment. An odor was first noticed on May 1, 2017, but only becoming severe on August 14, 2017 when the Tenant/Complainant's bathroom tub was removed to be replaced; leaving a temporary hole in the wall, which odor continued until September 15, 2017 when the wall was repaired and the new tub installed, and the Tenant/Complainant indicated that the Landlord had been notified by telephone calls and personal contact with the Superintendent, Thomas Lee, while making repairs in the apartment with the odor becoming so severe between September 8th – September 10th that it was difficult to make use of the bathroom.
- b. There exists a hole in the hallway wall, which continues to the present time and was created when management was making repairs to the Tenant/Complainant's bathroom tub and determined that the neighboring apartment's bathroom plumbing was connected to the Tenant/Complainant's plumbing, and it was creating its own issues.
- c. Two holes in the bathroom wall caused by the removal of the old tub and its replacement with a new tub, which were covered by black plastic bags or wrapping and required further replacement of tiles and drywall, all of which occurred between August 14, 2017 and September 6, 2017; though the tiling was not completed until September 27, 2017 due to a request from the Tenant/Complainant for a certain color tile, and the condition did not prevent the Tenant/Complainant from making use of the bathroom tub either for bathing or showering.
- d. Water seeping and leaking from around the air conditioning opening/hole (not air conditioner) and noticed whenever there was heavy rain beginning April 1, 2017 and continuing to date, but only when it rains. Notice was given to the Landlord by letter of April 20, 2017; May 25, 2017; June 19, 2017 and July 14, 2017; though testimony did not state exactly who received said letter, and apparently no one present at the aforesaid hearing received the

letter. The leaks are allegedly causing a safety hazard, since there is an electrical outlet below the air conditioner, which may be in contact with the leaks. The Tenant/Complainant indicated that she rarely, if ever, uses the air conditioner.

- e. A clogged sink in bathroom and kitchen was clogged for three days, which the Landlord corrected after receiving notification from the Tenant/Complainant.
 - f. Tenant/Complainant claimed the tiled wall in the bathroom is not flush or level with the surface, which the Landlord claims was damaged due to the fact that the Tenant/Complainant was placing tape on the caulked areas for no apparent reason.
 - g. There is a two inch trench going along the side of the bathroom tub with ponding water. The Tenant/Complainant notified the Landlord by phone and personal contact on or about August 14, 2017, and the Landlord indicated that the trench was caused by the replacement of the old tub with a newer, but slightly smaller tub, and the Landlord cemented the trench closed, but the ponding of water was discovered to be caused by water coming from the next apartment, which then had to be addressed separately. Apparently based on the testimony, the problem was resolved approximately two weeks ago.
 - h. The water leaking into hallway and inside bathroom is related to the trench situation and caused by the next door neighbor's leaks, which were corrected.
 - i. The bathroom grab bars, located next to the toilet and in the bathtub were taken out when the bathtub was being replaced, and were not replaced until the tub was replaced, so that the toilet and bathtub did not have grab bars between August 14, 2017 and early September, 2017; though the Tenant/Complainant indicated that she did not need to use the grab bars.
 - j. The bathroom wall was covered from August 14, 2017 to September 6, 2017 for tile replacement.
 - k. The Certificate of Occupancy listed the Tenant/Complainant as being in Apartment 4C when she is in 10B.
2. The Tenant/Complainant submitted the following exhibits as evidence to her case:

- T-1 Notice of Violation and Order to Correct Identification from the Code Enforcement Department of Neptune Township, dated September 19, 2017 as against Sebastian-Neptune Urban Renewal, LLC listing some of the deficiencies noted above.
- T-2 Proof of Service of Complaint upon the Landlord with copies of Certified Mail receipts.
- T-3 Police Department Report of September 8, 2017 concerning Tenant/Complainant's complaints with regard to odor from next door neighbor's apartment.
- T-4 Certificate of Inspection for issuance of Certificate of Occupancy for Carolyn Sublett, dated February 14, 2017, listing unit as 4C.
- T-5 Certificate of Inspection listing the issuance of a Certificate of Occupancy to Unit 10B and identifying the tenant as Timothy Kinney.
- T-6 Code Enforcement of Neptune Complaint of Carolyn Sublett dated September 5, 2017 concerning open wall, plumbing and water leaks.
- T-7 Code Enforcement of Neptune Complaint of Carolyn Sublett dated September 15, 2017 referring to hole in wall, no grab bars, trench beside tub and smell.
- T-8 Photographs of clogged sink, tile in the bathroom and outside hallway hole.
- T-9 Photographs of other side of wall from August 13, 2017 to September 6, 2017 and outside hallway.
- T-10 Photographs of grab bars being removed and leaks from the air conditioner.
- T-11 Photographs of the bathroom trench along the tub.
- T-12 Copy of letter sent to management dated April 20, 2017; May 25, 2017; June 19, 2017 and July 14, 2017.
- T-13 Photographs of rain leaks in the air conditioning hole area
- T-14 Copy of letter sent to management on June 19, 2017.
- T-15 Photographs of leaks from air conditioning hole area.

- T-16 Letter to management dated May 25, 2017.
- T-17 Copies of Certified Mail receipts which accompanied letters.
- T-18 Code Enforcement results showing correction of violations.
- T-19 Pictures of bathroom October 4, 2017.

3. The Landlord submitted the following exhibits on its behalf:

- L-1 Photograph of bathroom tub.
- L-2 Photograph of bathroom tile.
- L-3 Photograph of bathroom floor.
- L-4 Photograph of front door.
- L-5 Maintenance date.
- L-6 Photograph of soap dish/grab bar.
- L-7 Photograph of bathroom towel rack.
- L-8 Work order – drywall – September 7, 2017
- L-9 Work Order - air conditioner – September 14, 2017

NOW, THEREFORE, BE IT RESOLVED, by the Neptune Township Rent Leveling Board, that the Neptune Township Rent Leveling Board has found the following facts:

- i. That the Board finds that appropriate due process notice was given to the Landlord by Certified Mail/Return Receipt Requested and the Landlord acknowledged service of the notice within the time period of the Ordinance and in compliance with the case of Ivy Hill Park, Section 3 v. Abutidze, 371 N.J. Super. 103 (2004), as further acknowledged by the Landlord at the address provided to all tenants.
- ii. That the Neptune Township Rent Leveling Board has subject matter jurisdiction over the Tenant/Complainant and Landlord based on the number of units in the complex, and based on Court decisions of the

Housing Authority of the City of Newark v. John Scott, 137 N.J. Super. 110 (App. Div. 1975) and Housing Authority of the City of Bayonne v. Ross, 396 N.J. Super. 195 (App. Div. 2007), there is no federal preemption for Rent Control Boards to provide for allowances of rent abatements as a result of reduced services or habitability issues even though there may be preemption for other reasons, such as regulating rent increases. Therefore the Board finds that it does have subject matter jurisdiction.

1. The Board found that the odor complaint does not represent a significant deficiency, since for the most part it only affected the Tenant/Complainant while an old tub was being replaced by a new tub, and did not cause lack of use of the bathroom.
2. The Board found that the holes in the wall within the bathroom and the holes in the wall in the hallway were significant deficiencies and that the Landlord was put on notice, but that the Landlord reacted upon notice within a reasonable time period to correct the holes in the bathroom, and that the tenant had no lack of use of the bathroom or of the tub or shower during the time period which the holes existed and were well covered, and that the hole in the hallway was due to work affecting more than one unit, and for the most part had no impact upon the Tenant/Complainant, since it was in a common area and did not affect the Tenant/Complainant's safety or welfare.
3. The Board found that the leaks around the air conditioning hole were a significant deficiency, but there was some confusion in terms of testimony as to whether the Landlord was truly notified of the problem due to the sporadic existence of the leaks only when it rained. The Board did not believe at this point in time that the deficiency has value, but placed the Landlord on notice that now the deficiency must be corrected within a reasonable time after it rains, or be proactive and correct the problem within the next 30 days, whichever occurs first.
4. The Board found that the clogged sinks in bathroom and kitchen were significant deficiencies, but that upon notification, the Landlord reacted within a reasonable period of time to correct the problem.
5. The Board found that the tile issue was an insignificant deficiency, which for the most part was cosmetic in nature.
6. The Board found that the trench along the bathtub was a significant deficiency and that the Landlord did not react within a reasonable time

period, as the trench continued from between two weeks to 48 days, and resulted in stagnant water, and may have been a hazard to the tenant getting in and out of the bathtub. Therefore, the Board found that the trench deficiency is subject to a valuation analysis.

7. The Board found that the removal and replacement of the grab bars were significant deficiencies, but that the Landlord reacted within a reasonable amount of time to correct the problem, and there was no danger to the Tenant/Complainant, since the Tenant/Complainant indicated she never made use of the grab bars anyway.
8. The Board found that the covering of the bathroom wall for tile replacement was not a significant deficiency.
9. The Board found that incorrect numbering on the Certificate of Occupancy was not a significant deficiency.

The Neptune Township Rent Leveling Board hereby finds that the only significant deficiency noted by the Tenant/Complainant which is subject to a reduced rental value is the trench deficiency, which the Tenant/Complainant shall be entitled to credits toward rent due and owing in the future as set forth below.

BE IT ORDERED AND DETERMINED, as follows:

1. The Board found that the trench along the bathroom tub, which existed from two weeks to 48 days was clearly in existence between August 14, 2017 to September 30, 2017, and that the deficiency, which now has been fully corrected, has resulted in a reduced rental value from August 14, 2017 through September 30, 2017 of two percent of the total base rent actually paid by the tenant of \$216.00 per month (Tenant/Complainant's rent obligation – not total contract rent per the Housing Authority of the City of Newark v. John Scott, 137 N.J. Super. 110 (App. Div. 1975) and Housing Authority of the City of Bayonne v. Ross, 396 N.J. Super. 195 (App. Div. 2007), which represents a total credit based on apportioned rent of 48 days or \$6.97 per day (18 days) for the month of August, 2017 amounting to $\$125.46 \times .02\% = \underline{\$2.51}$ and \$7.20 per day (30 days) for the month of September amounting to $\$216.00 \times .02\% = \underline{\$4.32}$, for a total of \$6.83; based on the trench/tub deficiency.

IT IS FURTHER ORDERED AND DETERMINED as follows:

1. That with regard to the credit provided above, the Tenant/Complainant may take said credit by deducting from her rent due and owing beginning December 1, 2017.

IT IS FURTHER ORDERED AND DETERMINED, that the municipal attorney is hereby authorized to provide the Landlord, Sebastian Villa apartments, c/o Sebastian/Urban Renewal, LLC, 2305 West Bangs Avenue, Neptune Township, New Jersey 07753, and the Tenant/Complainant, Carolyn Sublett, 2305 West Bangs Avenue, Apt. 10B, Neptune Township, NJ 07753, with a written notice of this decision by copy of this resolution effective the date of execution of this resolution by supplying the same pursuant to Ordinance and that either the Landlord or the Tenant/Complainant shall have a right within twenty (20) days of the date of receipt of this determination in accordance with the Neptune Township Rent Control Ordinance, Rules And Regulations of the Neptune Township Rent Leveling Board to file an appeal before the Neptune Township Committee.

OFFERED BY BOARD MEMBER:

SECONDED BY BOARD MEMBER:

AND ADOPTED ON ROLL CALL BY THE FOLLOWING VOTES:

ROLL CALL

Affirmative:

Negative:

Absent:

Dated: November 2, 2017

JAMES MANNING, JR., CHAIRMAN

ATTEST:

PAM HOWARD, Secretary

I hereby certify the foregoing to be a true copy of the resolution adopted by the Neptune Township Rent Leveling Board at a meeting held on November 2, 2017.

ATTEST:

PAM HOWARD, Secretary