

**HOUSING CODE BOARD OF APPEALS MEETING
MEETING MINUTES
October 13, 2015**

The Housing Code Board of Appeals held a meeting on Tuesday, October 13, 2015.

I. Call to Order

Chairman Charland called the meeting to order at 7:00 p.m. and asked those present to stand for the Pledge of Allegiance.

II. Roll Call

Commissioners present: Noe Andy Charland, Joel Baldwin, James McMellon, Richard Merly, Jr. and Todd Casey

Staff present: Deepa Joseph, Director of Health; Laura Miller, RS, Environmental Health Officer; Paul Scholz, RS

Others present: G. Adam Schweickert, Attorney for the Appellant; Thomas Murphy, Appellant

III. Election of Officers. Chairman Charland called for the nomination of Chairman. Mr. McMellon nominated Noe Andy Charland, seconded by Mr. Baldwin. Mr. Baldwin asked about the term of the officers. Mr. Charland explained officers are elected every year and since there have been no meeting this year this was the first order of business and the term would expire at the end of the year or until a new Chairman is elected. Chairman Charland called for a vote as to the election of Chairman. All were in favor.

Chairman Charland then called for the nomination of Vice Chairman. Mr. McMellon nominated Joe Baldwin, seconded by Mr. Casey. Chairman Charland called for a vote as to the election of Vice Chairman. All were in favor.

IV. Appeal of G. Adam Schweickert, attorney for property owner, Thomas Murphy, regarding a Notice of Violation issued by the City of Milford Health Department on August 24, 2015 for the premises at 43 Avon Street, Milford, Connecticut. Several housing code violations are noted: Mold on the basement floor, exposed wiring in the bedroom and the basement, a defective outlet in the living room, a window sash that does not stay open, cracked or peeling paint on the bedroom ceiling and there is a leaking hot water tank, no smoke detectors or carbon monoxide detectors installed in the apartment.

G. Adam Schweickert, 215 Broad Street, Milford, attorney with Landlord Law Firm spoke on behalf of his client, Thomas Murphy, owner of 43 Avon Street, Milford. Attorney Schweickert explained there two items he would like to address. First, the items identified by the tenant occurred after the tenant took possession and second, many of the items were caused by the tenant who has refused to allow access to the Mr. Murphy and/or his contractors to make the necessary repairs. Attorney Schweickert requested that the Health Department also issue the order to the tenant in an effort to assist Mr. Murphy in gaining access to make the necessary repairs.

Mr. Casey commented that the reality of the situation is that Mr. Murphy want to make the repairs and the access is the problem. If the Health Department has the ability to issue an order to the tenant then it should be done in order to assist Mr. Murphy.

Attorney Schweickert also explained that there was a summary process action pending for failure to pay and Mr. Murphy had been robbed of some of his belongings in the basement. There has been an arrest and that is pending in the Court. A stipulated judgment has entered in Housing Court which requires the tenant to vacate by December 31st and to allow access upon 24 hours notice. Mr. Murphy has been trying to reach the tenant since last Tuesday and has received no response. Mr. Murphy had sent a plumber to repair the hot water heater who was refused entry by the tenant. Paul Scholz was on the phone with the tenant when the plumber arrived and can verify that is correct. This is a family friendship that has deteriorated as a result of these issues. It is believed that the daughter is the problem. Mr. Murphy can obtain access via another Court order but they expect it will be blocked by the tenant who will cause additional problems. With the exception of the window, all the violations were caused by the tenants.

Mr. Merly asked how long the tenants have been in possession of the premises. Attorney Schweickert responded since 2013. He further explained that the lease contains a provision that the landlord is responsible except for the negligence of the tenants.

Mr. Merly asked how Mr. Murphy found out about the problem with the hot water heater. Attorney Schweickert responded that Mr. Murphy noticed it was weeping when he was in the basement. He confirmed that the tenants had hot water and then contacted a plumber who went out the property right away. Mr. Murphy explained that he had the plumber go out right away and that he addresses the day to day problems as he had lived on the property. He also explained that the loose wire if a low voltage CAT5 and the other is from a ceiling fan. Mr. Merly asked when was the attempt to fix the water heater made. Mr. Murphy responded he had attempted to have the water heater repaired in August.

Mr. Merly commented on the issue of the mold and that mold takes a long time to grow.

Mr. Baldwin asked if notice to the tenant is verbal or written. Attorney Schweickert responded that either type of notice is sufficient. Mr. Baldwin asked if notice had been given that a plumber would be coming to repair the water heater. Attorney Schweickert responded that they had waited to address that issue in the Court order because of refusal to allow entry.

Mr. Baldwin suggested that they just wait until the end of the year when the tenants vacate the property.

Attorney Schweickert reiterated they were there to request notice be given to the tenant in order to gain access. He further commented the tenants are living with these problems because they refuse to allow access to Mr. Murphy.

Mr. Baldwin suggested condemning the property in an effort to gain access. Mrs. Joseph explained that Health Department's role is to enforce the housing code and not get involved in the landlord/tenant disputes. The sanitarian found violations and an order was issued. The property is not in such a state that it would require condemning.

Mr. Merly asked if Mr. Scholz had a problem gaining access. Mr. Scholz responded he had no issue gaining access. Mrs. Joseph reiterated it is not the function of the Health Department to get involved in landlord/tenant matters. It is their job to investigate the complaint. There is no evidence the violations were caused by the tenant and it is the landlord job to maintain the property. Mr. Scholz was permitted access again last Friday. Mr. Casey asked if Mr. Scholz could schedule a visit to the property and Mr. Murphy or his contractors would accompany him to fix the issues. He further stated Mr. Murphy is in a catch 22. He can't gain access and has to honor the rights of the tenant. Attorney Schweickert explained that the Health Department would not have any problem gaining access as the tenants call to complain. The Court order allows Mr. Murphy to give notice and show up, but he can't enter if the tenant refuses because that would be trespass. The remedy at this time would be to go back to Court for an immediate eviction. The tenants wanted to stay through the holidays and they worked with them in the stipulated judgment to allow them to remain. They are trying to resolve this short of going back to Court. The plumber was at the property on Tuesday, August 25th. They do not argue that the violations are still present and need to be addressed. Mr. Murphy needs access to see the issues and resolve.

Mr. Merly asked about remediating the mold problem. Mrs. Joseph explained the packet passed out by Mr. Scholz shows the initial inspection and the inspection from last Friday. Mr. Scholz explained the mold is not extensive but it is there on the floor, wall and boxes. He is unable to comment on what would be required to clean the mold. Attorney Schweickert explained the tenant has no possessions in or use of the basement except for doing laundry.

Mr. Merly commented that there are open junction boxes in the damp basement. Mr. Scholz commented that some have uncapped wires. Mr. Merly commented the washer in the basement is not on a GFI plug that is required. Mr. Casey commented that all issues need to be addressed.

Mrs. Joseph commented that the landlord states he has made attempts to gain access. The tenant calls and states the issues have attempted to call landlord and nothing has been addressed. Again, the health Department cannot be involved in landlord/tenant disputes. The property does not warrant condemning. Mr. Casey inquired as to how does Mr. Murphy correct the violations if he cannot gain access. Mrs. Miller explained it is important that the Health Department not get involved in he said/she said. It is their job to identify the problem. The property does not warrant condemnation and if it did it would require the City relocating the tenants and placing a lien on the property. Landlords are encouraged to document every attempt to illustrate such to the Director and request an extension of the compliance date. Mrs. Miller suggested taking the document from Housing Court and going with a police officer to the property. Attorney Schweickert indicated police officers do not enforce Housing Court orders.

Mrs. Miller asked if the Court order was saying to make the necessary repairs, but since the tenant is not allowing access and Mr. Murphy must wait until December 31st. Attorney Schweickert explained the remedy is to go back to Court and ask for immediate eviction. When you cannot gain access you can ask for an injunction to allow immediate access. They would prefer not to evict prior to the December 31st date.

Mrs. Miller explained the Health Department is just interested in getting the violations corrected. Attorney Schweickert responded they are happy to address the issues and will give written notice. Tenant identified to Mr. Scholz that the plumber was there and then refused access. Mrs. Miller commented that the Health Department does not have the authority to order access.

Attorney Schweickert responded that Mr. Murphy will get a date for the plumber and will give notice to the tenant and will copy this Board and the Health Department. If the tenant refuses access they will go back to Court and request immediate eviction. Mrs. Miller commented the landlord is under no obligation to allow the tenant to remain until the end of the year. Mr. Casey commented that the landlord needs to go back to Court and request immediate eviction. Attorney Schweickert responded that he will take it back to Court and will subpoena Mr. Scholz. He will let the Health Department know what the judge order and if eviction is ordered they will do that immediately. He will provide written notice requesting access to the property and will require refusal in writing. Chairman Charland commented it is outside the Board's jurisdiction to uphold the Court order.

Mr. Casey suggest providing an extension of the compliance date.

Chairman Charland asked for anyone speaking in favor; no one did.

Mr. Baldwin asked if the tenants had been notified of this hearing. Mrs. Miller explained that is not typically done as it is not required. Mr. Merly commented that the Board should not hear testimony about the lawsuit as the Board is not a party.

Attorney Schweickert reiterated the request to have the Health Department issue an order to the tenant in hopes of gaining access.

Chairman Charland asked for anyone speaking in opposition.

Mrs. Joseph stated the role of the Health Department is to investigate complaints and enforce the Housing Code. Violations were found and an order was issued. The Health Department cannot get in the middle of the landlord/tenant. It is their job to make sure it is a safe and healthy environment. She encouraged the landlord to take whatever steps necessary to correct the violations.

Mr. Merly asked when the order was issued. Mrs. Joseph responded the order was issued August 25th with a compliance date of September 7th.

Mr. Scholz commented that the statement regarding the plumber was correct. He was on the phone with the tenant who stated the plumber was at the door. Mr. Scholz informed the tenant that this was a good thing, this is what she wanted. He then ended the phone conversation and cannot speak to whether the tenant refused entry.

Attorney Schweickert again stated the request to issue the order to the tenant. He further stated if there is no authority to do so he will bring the matter back to Housing Court.

Mr. Baldwin asked if the Health Department issues orders to tenants. Mrs. Miller state no they do not issue orders to tenants.

Mr. Casey commented that the water heater problem was not caused by the tenants. Attorney Schweickert agreed and indicated Mr. Murphy is ready to fix the water heater. He further stated that Health Departments across the state issued orders to tenants. Mrs. Miller commented that all towns have different codes they follow.

Mr. Casey asked if there were smoke detectors in the dwelling. Mr. Murphy commented they were in place when the tenant took possession. He believes they may have been removed by the tenants.

Mr. Merly commented there are different codes for rental properties. Mr. Murphy commented he will bring it up to code. He asked if they tenant will not allow access how does he make it right. Mr. Merly stated it is between the landlord and the tenant. He further asked if they had stopped paying rent. Attorney Schweicker commented they were only one month behind.


Mr. Merly suggested the Health Department contact the tenant to gain access. Mr. Casey suggested an extension of the compliance date of 4 to 5 weeks to gain access. Mr. Joseph commented the compliance date has passed. Mr. Casey commented the property is not condemnable, however it is not safe.

Chairman Charland closed the hearing and requested a motion.

Mr. Baldwin made a motion to uphold the order of the Health Department, seconded by Mr. McMellon. Motion passed 4 in favor, 1 against.

V. Adjournment

There being no further business to discuss, Mr. Baldwin made a motion to adjourn, seconded by Mr. McMellon. Motion carried unanimously. The Committee adjourned at 7:50 p.m.



Respectfully submitted,
Toni Jo Weeks
Acting Board Secretary