

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
DIVISION OF HOTELS AND)
RESTAURANTS,)
)
Petitioner,)
)
vs.) Case No. 02-0146
)
PALM COURT APARTMENTS,)
)
Respondent.)
_____)

RECOMMENDED ORDER

A formal hearing was held before Daniel M. Kilbride,
Administrative Law Judge, Division of Administrative Hearings
("DOAH"), on February 28, 2002, in Melbourne, Florida.

APPEARANCES

For Petitioner: Tiffany A. Short, Esquire
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-2202

For Respondent: Rudolph Hardick, President
Fourteen Carmalt, Inc.
Post Office Box 320615
Cocoa Beach, Florida 32932

STATEMENT OF THE ISSUES

Whether the Respondent, public lodging establishment,
violated the provisions of Chapter 509, Florida Statutes, as

alleged in the Amended Administrative Complaint, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On November 16, 2001, the Petitioner filed an Administrative Complaint alleging that inspections of the Respondent public lodging establishment conducted pursuant to Section 509.032, Florida Statutes, revealed the Respondent caused, directly or indirectly, the termination or interruption of utility services furnished to tenants in violation of Section 83.67(1), Florida Statutes. The Administrative Complaint was served on the Respondent by certified U.S. mail. On December 7, 2001, the Petitioner received an Election of Rights form from the Respondent in which the allegations contained in the Administrative Complaint were disputed, and a petition was made for a formal administrative hearing to resolve disputed issues of material fact. On January 11, 2002, the Petitioner filed a request with DOAH for formal evidentiary hearing. A hearing pursuant to Section 120.57(1), Florida Statutes, was noticed and set for February 28, 2002. On February 11, 2002, the Petitioner filed a Motion for Order Allowing Correction for Scrivener's Error, which Motion was granted over objection by Order issued on February 18, 2002. The Petitioner filed an Amended Administrative Complaint on February 19, 2002, in which the charge of violating Section 83.67(1), Florida Statutes, was

replaced with an allegation that the Respondent violated Section 509.221(3), Florida Statutes, by failing to maintain proper lighting, heating, cooling, and ventilation and that the Respondent public lodging establishment was not operated with strict regard to the health, comfort, and safety of the guests.

At the hearing, the Petitioner presented the testimony of Ed Weimer, Safety and Sanitation Specialist, and offered three exhibits that were accepted without objection into evidence. The Respondent presented no witness testimony or evidence. The parties were granted 15 days from the filing date of the transcript to submit proposed recommended orders. The Transcript was filed with DOAH on March 11, 2002. Petitioner filed its Proposed Recommended Order on March 26, 2002. Respondent has not filed proposals as of the date of this Recommended Order.

FINDINGS OF FACT

1. The Respondent is, and has been at all times material hereto, a public lodging establishment licensed by the State of Florida, having been issued license number 15-00043-H for apartment units located at 14 Carmalt Street, Cocoa Beach, Florida.

2. The Petitioner received a consumer complaint on October 10, 2001, that one of the tenants in the Respondent public lodging establishment had been without electrical power and hot water for at least three days.

3. On October 11, 2001, Ed Weimer, Safety and Sanitation Specialist with Petitioner ("inspector") conducted an inspection of the Respondent public lodging establishment. The inspector observed that Units 5 and 16 were occupied but had no electrical power. The inspector observed that when other tenants operated light switches in Unit 5 and 16 the lights did not come on. Extensions cords had been run through the windows of units without power from units with power. In addition, a common area hallway was also without electrical power.

4. On October 11, 2001, the inspector provided notice of the observed violations by posting a copy of the Lodging Inspection Report at the site, sending a copy of the Report by certified U.S. mail to the Respondent, and by orally communicating the contents of the Report by telephone to the Respondent's principal Rudolph Hardick, Alice Hill, the manager of the apartment complex, and an unidentified secretary in the Respondent's office.

5. Since the violations were observed after 12:00 p.m. on October 11, 2001, the Respondent was give notice that remedial

action was required to be taken by 10:00 a.m. the following day rather than that same day.

6. On October 12, 2001, at approximately 10:10 a.m., the inspector conducted a follow-up inspection of the licensed premises and observed that the violations noted in the Lodging Inspection Report dated October 11, 2001, had not been corrected.

7. On October 12, 2001, the inspector completed a Call Back/Re-Inspection Report and provided notice that same day of said follow-up inspection and report by personally delivering a copy of the Call Back/Re-Inspection Report to Respondent's manager, Alice Hill.

8. The mechanism by which proper lighting, heating, cooling, and/or ventilation is terminated or interrupted is not relevant to the statutory obligation of each licensed public lodging establishment to maintain such lighting, heating, cooling, and ventilation with strict regard to the health, comfort, and safety of guests.

9. Without electrical power, none of the requirements stated in Section 509.221(3), Florida Statutes, can be satisfied, to wit, maintenance of proper lighting, heating, cooling, and/or ventilation and the operation of the licensed premises with strict regard to health, comfort, and safety of the guests.

10. The Respondent had adequate time, notice, and opportunity to correct the observed violations but failed to do so.

11. The Respondent has not offered any explanation or mitigation for its failure to comply with its statutory obligation under Section 509.221(3), Florida Statutes.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

13. The Department of Business and Professional Regulation, Division of Hotels and Restaurants, is the state agency charged with regulating public lodging establishments, pursuant to Chapter 509 and Section 20.165, Florida Statutes.

14. Section 509.013, Florida Statutes, reads in pertinent part:

As used in this chapter, the term:

* * *

(3) "Guest" means any . . . tenant . . . or occupant of a public lodging establishment . . .

(4)(a) "Public lodging establishment" means any unit . . . within a single complex of buildings, which is rented to guests more than three times in a calendar year for

periods of less than 30 days or 1 calendar month, whichever is less, . . .

15. Section 509.221(3), Florida Statutes, provides, inter alia, that "each establishment licensed under this chapter shall be properly lighted, heated, cooled, and ventilated and shall be operated with strict regard to the health, comfort, and safety of the guests."

16. Pursuant to Section 509.261(1), Florida Statutes, the Division of Hotels and Restaurants may impose penalties for violations of Chapter 509, Florida Statutes, including an administrative fine of not more than \$1,000 per offense; mandatory attendance, at personal expense, at an educational program sponsored by the Hospitality Education Program; and the suspension, revocation, or refusal of the Respondent public lodging establishment's license.

17. Petitioner has the burden of proving, by clear and convincing evidence, the allegations against the Respondent contained in the Administrative Complaint. Section 120.57(1)(j), Florida Statutes; Department of Banking and Finance v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

18. Petitioner has proven by clear and convincing evidence that Respondent violated Section 509.221(3), Florida Statutes, by failing to maintain electrical power to certain dwelling

units of the licensed premises. In so doing, it failed to operate the licensed premises with strict regard to the health, comfort, and safety of guests. Cf. Yoder v. Greenwald, 246 So. 2d 148, 150 (Fla. 3rd DCA 1971); see also Schulte v. Gold, 360 So. 2d 428 (Fla. 3rd DCA 1978).

19. Section 509.221(3), Florida Statutes, contains no exception and provides no discretion to a licensed public lodging establishment to determine whether a tenant needs or deserves proper lighting, heating, cooling, and ventilation. The mechanism by which proper lighting, heating, cooling, and/or ventilation is terminated or interrupted is not relevant to the statutory obligation to maintain it.

20. There is no authority for the Respondent to terminate, interrupt, or allow the interruption of utility service as a rent enforcement mechanism, or for any reason, and Section 509.221(3), Florida Statutes, specifically prohibits such action or inaction.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be enter finding the Respondent guilty of violating Section 509.221(3), Florida Statutes, and that an administrative fine of \$1,000 be imposed.

DONE AND ENTERED this 11th day of April, 2002, in
Tallahassee, Leon County, Florida.

DANIEL M. KILBRIDE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of April, 2002.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.