

ACRE Goes to Court On First Rental Registration Ordinance and Prepares to Fight More

[On behalf of Dornish Law Offices, PC](#) | Mar 1, 2009 | [All, Landlord-Tenant, News](#)

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Last week, ACRE joined the fight with the Apartment Association of Metropolitan Pittsburgh, The Landlord Services Bureau, The Realtors' Association of Metropolitan Pittsburgh, our state association, The Pennsylvania Residential Owners' Association, and our fellow investors at Western Pennsylvania Real Estate Investors' Association, the last three of which I am representing together with ACRE to fight against the Pittsburgh Rental Registration Ordinance. We chose to fight this Pittsburgh ordinance first, since all the resources of all of these plaintiffs are aligned for this fight, we have strong local print, radio and television coverage of the cases, and all or part of many of the other local ordinances are very similar, if not identical to the Pittsburgh ordinances.

After we filed our complaint last Thursday, we were immediately in front of Allegheny County Court of Common Pleas Judge Joseph James on Friday morning. Judge James is no stranger to landlord tenant issues, having presided over Pittsburgh's Housing Court for over a decade. Judge James heard our oral arguments on the petitions for injunctive relief to prevent the Pittsburgh ordinance from going fully into effect April 1, and our motion to consolidate the three cases brought on behalf of landlords and property managers against the City of Pittsburgh for its Rental Registration Ordinance.

In open court, the Judge heard first the Apartment Association, and asked both counsel for the Landlord Services Bureau and me to restrict our comments and argument to issues not covered by the Apartment Association. Judge James determined that he would reserve argument on the issue that the fee for registration is really an extra tax on residential rental properties, and not permitted under Pittsburgh's Home Rule Charter, or the state Local Tax Enabling Act, until we had a chance to take

depositions of the city council staff, building inspection staff, and other city personnel scheduled for this week, and from those depositions, had more evidence on the objectives of council, the cost of administering the ordinance, and anticipated revenue for him to consider. The Judge challenged the Apartment Association's assertion (with which we agree) that the ordinance violates the Home Rule Charter of the City by imposing business and employment conditions on landlords. Rather, the Judge indicated a belief that the conditions imposed were on property within the City, which the City may properly regulate.

The Landlord Services Bureau argued next, and the Judge challenged their argument, with which we also agree, that disclosing tenant names and phone numbers violates privacy laws. During their argument, the Judge also commented on our argument in our Complaint that the appointment of a local agent for service of process conflicts with the Pennsylvania Rules of Civil Procedure. The Judge reasoned that since building code violations are summary criminal matters, the City has an interest in trying to reach out of state property owners, which PA long arm service rules do not adequately address.

I argued next, and focused on two issues not fully developed by the other attorneys, the burden on owners of single family homes of having to register for occupancy permits and meet all Zoning requirements for those permits before being able to get Rental Registration, and the problem that a responsible local agent under the ordinance is to assume responsibility for "operating the registered rental unit in compliance with all applicable City ordinances." This both requires that the agent undertake activities which require being the owner, an employee of the owner, or a licensed real estate agent under the supervision of a broker, AND exposes the agent to personal liability for violation of the ordinance, a summary offense punishable by a fine of \$1,000 per unit per month. Both arguments met a lukewarm reception from the Judge, who focused on the City's need to reach "Absentee Landlords."

The City Solicitor, George Specter, indicated that he had no objection to the consolidation of the cases, so our motion was granted. We adjourned to the Judge's chambers for a private discussion normal in the course of a lawsuit designed to determine whether we could agree with the City on anything to reduce the issues in the litigation or resolve our dispute altogether and avoid further litigation. After useful discussions with the Judge, he encouraged us to meet further to try to work out compromise language, and

after returning to the courtroom, entered an order that registration should continue and be completed by April 1, that Occupancy permits and inspections should not be required for registration, and that enforcement of violations shall be on hold. He set two days of hearing on the injunction this Thursday, March 19 and Friday, March 20, allowed depositions of witnesses to be scheduled for March 17 and 18, and encouraged us to resolve as many issues as possible between us before then. Nine attorneys then met for several hours in the City Attorney's offices to see what compromises we could achieve, and therefore the City attorneys met with Council and the mayor to review our suggestions.

On Tuesday and Wednesday of this week, instead of depositions all of the lawyers had conferences calls, which resulted in a consent order being sent to the judge for approval and being signed Wednesday afternoon.

The consent order, signed by the Judge postpones the depositions and hearings scheduled for this week until such time as any party asks the court to reschedule, AND postpones the deadline for registration from April 1 to September 1, 2009.

The postponement is a result of our efforts to rewrite the ordinance from a its current form of a tax collection assistance, zoning enforcement assistance, multi faceted revenue generating ordinance, all wrapped around a registration and inspection justification, to a simple registration and habitability inspection ordinance. Hopefully, when we are done, the expressed purpose of the ordinance will pretty closely match the end result, and incorporate protection of property owners' constitutional property and due process rights as well.

Since Friday, we have made great progress with the City on making changes to the ordinance. I am hopeful we will, over the coming weeks, get a new ordinance passed by Council and approved by the Mayor which will not include prerequisites for occupancy permits, will not include prerequisites for payment of taxes and housing court judgments, will not require a responsible local agent, or have that agent be liable for the condition of the property. We will have to convince the City lawyers, mayor and council of the soundness of the reasons for our requests. The ordinance is likely to require identification of each rental unit, and the name of each tenant who signed a lease to occupy the unit, and to require each owner who rents residential property in the City to submit to service of process by certified mail, return receipt requested, for any health and safety or building code violations. I anticipate a registration fee structure which factors in both the

cost of processing an individual registration and the cost savings if a single landlord at a single address, applies for a hundred units on a single application. I also believe the ordinance will require the deposit into a trust fund of the actual receipts, to be compared to the actual expenses of administration of the program, with adjustment of the registration fees to avoid any revenue to the City beyond the cost of the program.

We will have to be vigilant over time in maintaining the integrity of the fee structure, and will have to follow through with the details of the ordinance being revised, but I believe there will be less court time and more negotiating time now that this court order is entered. If a much better ordinance does not result from these efforts, any party can ask the Judge to move forward with our hearings, so we will lose nothing except the timing before primary elections as a result of this order.

My recommendation to owners and property managers based on these developments is to wait to file any rental registration applications until revisions are made to the ordinance and the form of the application. On any applications already filed, the City will be continuing to process the applications under the present application form and requirements, which will result in those having already filed having to deal with occupancy permit and zoning compliance issue which have come up. Keep in mind that zoning requirements are what they are, and current undetected violations are still violations, and if discovered by the City are actionable without the rental registration at all.

ACRE is pleased with the efforts of the Judge to resolve our concerns amicably, and with the efforts of the City law department, Council and Mayor's office over the last week to listen to our concerns and work toward a compromise which meets the City's health and safety concerns without unfair burdens on residential landlords or managers. While we are not there yet, and have a long way to go, we are certainly on the right path, and it is always better to reach our goals through communication and compromise than through adversarial litigation. Sometimes it takes the litigation to open the dialogue, and the dialogue to resolve the litigation. The litigation remains in place only in case the dialogue fails.

For communities throughout Western Pennsylvania, we have to strike while the iron is hot and the Pittsburgh case is in the news. Everywhere similar rental registration ordinances are in place, we have to write to the municipal solicitors reminding them that we are in the fight in Pittsburgh and that their ordinances must follow the same state laws and provided the

same constitutional protections to landlords' due process, equal protection and property rights. We must ask for their accounting for income from rental registrations and inspections in 2008, their accounting for the costs of administering their respective programs, and if they show any surplus, how they plan to refund that money to landlords to avoid violating the Local Tax Enabling Act. Once we get all of the municipalities to take notice of the Pittsburgh litigation, and its anticipated favorable settlement or court order, then we will shift our focus to the ordinances making landlords responsible for the tenants' conduct. Hopefully, we can employ the same strategy on that front, focusing on Pittsburgh first, and using the publicity from that result to get other municipalities to correct the inadequacies and unfairness of their identical or similar ordinances.

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