



CITY OF  
**PORTLAND, OREGON**

HEARINGS OFFICE

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**HEARINGS OFFICER'S ORDER**

CITY OF PORTLAND, petitioner, vs. WANNA CHAN, ET AL, respondents

CASE NO. 2090022

[Bureau Case No. 09-101264-HS]

PROPERTY: 7101-7103 SE Division Street

**LEGAL DESCRIPTION:**

Yam Tracts; Lot 3, 1S2E05CD-03603,  
City of Portland, Multnomah County, Oregon

DATE OF HEARING: April 24, 2009

**APPEARANCES:**

Mr. Lee Gonzales, for the City

Mr. Victor Leo, for the Respondents

HEARINGS OFFICER: Mr. Gregory J. Frank

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

Mr. Lee Gonzales, City of Portland Housing Inspector, appeared and testified on behalf of the City. Mr. Victor Leo, pursuant to written authorization (Exhibit 16) from Respondent Ms. Wanna Chan, appeared and testified. The Hearings Officer makes this decision based upon the testimony of Mr. Gonzales and Mr. Leo and the exhibits admitted into the evidentiary record (Exhibits 1 through and including 16). The exhibits were offered by Mr. Gonzales and Mr. Leo expressed no objections to the entry of any offered exhibit.

Mr. Gonzales stated this case involved a residence located at 7101 – 7103 SE Division Street (the “Subject Property”). Mr. Gonzales testified that, as a result of an inspection on April 23, 2009, all violations listed on Attachment A of Exhibit 1, excepting violations 2, 3, 5 and 6, have not been corrected. Mr. Gonzales noted that Attachment A failed to give a number reference to one of the violations “Permit Required: An unapproved dwelling unit has been created without obtaining required permits and inspections. 29.50.010, 29.50.020.” The Hearings Officer, with concurrence of Mr. Gonzales and Mr. Leo, placed a handwritten note on Attachment A, prior to the quoted alleged violation stating “6a.” Hereafter, this alleged violation shall be referred to as violation 6a.

Mr. Gonzales described and reviewed each of the alleged violations (excepting 2, 3, 5 and 6) during his testimony. Mr. Gonzales testified that a tenant resides in the basement dwelling unit of the Subject Property and that alleged violations 6a, 7, 8, 16, 18, 21, 22, and 23 present serious fire, life and safety risks to the basement tenant. Mr. Gonzales stated that Respondent, per Exhibit 4, has been the owner of the Subject Property and there have been numerous housing and/or nuisance cases the Subject Property (Exhibits 6, 7 and 8).

Mr. Leo testified that he was not disputing the existence of the alleged violations. Mr. Leo did express concern related to alleged violations 4 and 8. Mr. Gonzales described that the chimney joints above the roof line (violation 4), still were missing mortar. Mr. Gonzales showed Mr. Leo, on the Exhibit 3 photo, the location of the missing mortar on the chimney. Mr. Leo stated that when Respondent purchased the Subject Property, the water heater was in the same condition as it is currently (regarding violation 8). Mr. Gonzales responded that any current owner is responsible for violations such as exist with the water heater irrespective of the fact that the violations existed when the owner purchased the property. The Hearings Officer finds Mr. Gonzales' statements regarding violations 4 and 8 are credible and that both of these violations exist.

The Hearings Officer finds that all violations listed on Attachment A, Exhibit 1, excepting 2, 3, 5 and 6, remain and must be corrected.

Mr. Leo stated that the Respondent was ready and willing to correct the violations and intended to remove plumbing fixtures and eliminate the basement dwelling unit. Mr. Leo indicated that the basement tenant's rental contract has expired and the tenant has been asked to vacate the premises. Mr. Leo stated that if the tenant vacates, all violations in the basement will be corrected in a timely manner.

The Hearings Officer noted, at the hearing, that the City's primary concern is the safety of the occupants of a residence and that both Mr. Leo and Mr. Gonzales agreed that the fire, life and safety violations in the basement do exist (violations 6a, 7, 8, 16, 18, 21, 22, and 23). The Hearings Officer also noted that the proper venue for Respondent to remove the tenant is by utilizing the provisions of the Oregon Landlord Tenant Law and the Circuit Court system. The Hearings Officer also noted that the Portland City Code placed certain restrictions on the City and Respondent in vacating a tenant from a residential occupancy (Portland City Code 22.03.090). A copy of 22.03.090 was provided Mr. Leo at the end of the hearing. The Hearings Officer, pursuant to 22.03.090, grants Respondent the right to exercise her rights in vacating the basement tenant until and unless Respondent fails to obtain (application, payment and issuance) of all necessary permits by July 1, 2009, at which time the City will have the sole right to vacate the basement dwelling unit at the Subject Property. The Hearings Officer finds that if the basement dwelling is not vacated by July 2, 2009, then the City shall vacate this area and costs associated with relocation of the tenant(s) shall be considered an additional civil penalty so long as the City follows the relevant provisions of the Portland City Code sections 22.05.010 and 22.06.010, and Oregon Revised Statute 90.450.

Mr. Gonzales requested that the Hearings Officer order that all violations be corrected. The Hearings Officer finds such request to be appropriate and will order all violations listed on Attachment A, Exhibit 1, to be corrected. Mr. Gonzales requested that a civil penalty be assessed in the amount of \$4,404.12 to recover costs associated with inspections made by the City of the Subject Property (2 inspections at \$94.56 each), the cost borne by the Bureau of Development Services in bringing the case to hearing (\$1,215), and a \$3,000 civil penalty (originally \$5,000 as set forth in Exhibit 1) to reflect the serious fire, life and safety risks posed by violations 6a, 7, 8, 16, 18, 21, 22, and 23. The Hearings Officer finds the request for cost recovery of \$1,404.12 is reasonable; had the Respondent responded timely these costs would not have been incurred by the City. However, the Hearings Officer denies the City's request for the additional \$3,000 penalty.

Mr. Gonzales requested that an incentive may prompt Respondent to expedite the violation corrective process. The Hearings Officer agrees. Mr. Gonzales requested an order from the Hearings Officer imposing a \$2,500 civil penalty (originally \$5,000 as set forth in Exhibit 1) with the \$2,500 civil penalty being suspended for 30 days to allow Respondent to secure all permits (application, payment and issuance) necessary to complete correction of

all violations. Mr. Gonzales requested that the \$2,500 civil penalty be cancelled if all permits were secured by Respondent within 30 days. The Hearings Officer finds that a civil penalty in the amount of \$2,500 is a reasonable and appropriate incentive (see Portland Policy Document ADM 9.01, paragraph 17 for factors to be considered in assessing civil penalties). However, the Hearings Officer believes that a longer time period should be granted and finds that the \$2,500 permit acquisition civil penalty should be suspended until July 1, 2009. If permits are secured by July 1, 2009, the Hearings Officer finds the \$2,500 additional civil penalty should be cancelled. If all required permits are not secured by July 1, 2009, the Hearings Officer finds that the additional \$2,500 civil penalty shall become due and payable and a lien upon the Subject Property.

Mr. Gonzales requested additional incentive-based civil penalties related to the completion of corrections to all violations. The Hearings Officer finds that such an incentive is appropriate and necessary. The Hearings Officer finds that a civil penalty in the amount of \$20,000 is an appropriate and reasonable incentive. The Hearings Officer finds that the \$20,000 additional civil penalty should be suspended until September 18, 2009. If all violations are corrected by September 18, 2009, then the \$20,000 additional civil penalty should be cancelled. If all violations are not corrected by September 18, 2009, the Hearings Officer finds that the additional \$20,000 civil penalty shall become due and payable and a lien upon the Subject Property.

Mr. Gonzales requested the Hearings Officer's order permit the City to summarily abate any confirmed nuisances at the Subject Property for a period of 1 year. Mr. Gonzales stated that because of an extensive history of confirmed nuisances at the Subject Property and their negative impact upon the neighborhood, the City desires the ability to correct the nuisance violations and thereafter bill the Respondent/Subject Property for the costs of correction. Mr. Gonzales stated that a disabled vehicle was present at the Subject Property on his visit on April 23, 2009. The Hearings Officer finds the City's request for summary abatement authority to be reasonable considering the history of nuisance violations at the Subject Property.

#### ORDER AND DETERMINATION:

1. Violations listed on Attachment A of Exhibit 1 (excepting 2, 3, 5 and 6) shall be corrected.
2. A civil penalty in the amount of \$1,404.12 is assessed and shall become due and payable on May 14, 2009, and if not paid shall become a lien upon the Subject Property.
3. An additional civil penalty in the amount of \$2,500 is awarded. This additional civil penalty (paragraph 3 of this Order) shall be suspended until 4:30 p.m. on July 1, 2009. If a writing is received by the Hearings Office, from the Bureau of Development Services, prior to 4:30 p.m. on July 1, 2009 that all permits necessary to correct the violations listed in paragraph 1 above have been secured (application, payment and issuance), then the \$2,500 additional civil penalty shall be cancelled. If a writing is not received by the Hearings Office by 4:30 p.m. on July 1, 2009, then the additional \$2,500 civil penalty shall become due and payable and become a lien against the Subject Property.
4. An additional civil penalty in the amount of \$20,000 is awarded. This additional civil penalty (paragraph 4 of this Order) shall be suspended until 4:30 p.m. on September 18, 2009. If a writing is received by the Hearings Office, from the Bureau of Development Services, prior to 4:30 p.m. on September 18, 2009 that all violations set forth on Attachment A of Exhibit 1 have been corrected, then the \$20,000 additional civil penalty shall be cancelled. If a writing is not received by the Hearings Office by 4:30 p.m. on September 18, 2009, then the additional \$20,000 civil penalty shall become due and payable and become a lien against the Subject Property.
5. The City shall have the right to summarily abate any future confirmed nuisance violations (including, but not limited to trash and debris, open and vacant building, disabled vehicle on private property)

from the date of this Order until May 30, 2010. The City shall not be required to provide notice to Respondent and may proceed without a search warrant, and with the assistance of the Portland Police Bureau, if necessary.

6. The Hearings Officer shall retain jurisdiction until June 2, 2010.
7. Respondent shall have the right to exercise her rights set forth in the Oregon Residential Landlord and Tenant Act through the Multnomah County Circuit Court from the date of the hearing (April 24, 2009) until July 1, 2009. If the tenant residing in the basement dwelling unit remains in occupancy on July 2, 2009, then the Hearings Officer orders that the City shall have the sole right to vacate the basement dwelling unit tenant. The Hearings Officer orders the City, if the basement dwelling tenant remains in occupancy on July 2, 2009, to vacate the basement by all persons until all fire, life and safety violations set forth in Attachment A Exhibit 1 (6a, 7, 8, 16, 18, 21, 22, and 23) are corrected. The City shall have the right to impose additional liens against the Subject Property for costs associated in the relocation of any tenants of the Subject Property to the extent permitted by Portland City Code 22.05.010 and 22.06.010, and Oregon Revised Statute 90.450.
8. This order has been mailed to the parties on April 30, 2009, and shall become final and effective on May 14, 2009. Any objections to this order must be in writing and received by the Code Hearings Office prior to the effective date. This case will be closed on June 3, 2010.
9. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: April 30, 2009

  
Gregory J. Frank, Hearings Officer

GJF:rs

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Complaint with Attachment A - List of Violations	Gonzales, Lee	Received
2	Notification List	Gonzales, Lee	Received
3	Photos	Gonzales, Lee	Received
4	Multnomah Assessor Property Information	Gonzales, Lee	Received
5	1/29/09 Photos	Gonzales, Lee	Received
6	TRACS printouts	Gonzales, Lee	Received
7	TRACS printout	Gonzales, Lee	Received
8	Case history	Gonzales, Lee	Received
9	1/29/09 Notice of Violation-Property Maintenance Code letter, Gonzales to Chan	Gonzales, Lee	Received
10	3/16/09 Referral of Housing Case to Code Hearings Officer letter, Gonzales to Chan	Gonzales, Lee	Received
11	City Lien Report	Gonzales, Lee	Received
12	Notice of City of Portland Housing Code Violation and Possible Lien Against the Property	Gonzales, Lee	Received
13	Mailing List	Hearings Office	Received
14	Hearing Notice	Hearings Office	Received
15	Notice of Rights and Procedures	Hearings Office	Received
16	Letter	Chan, Wanna	Received