

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 08-323

Complainant:	No. 1352310770A
Judge:	No. 1352310770B No. 1352310651B

ORDER

The commission reviewed the complaint filed in this matter, as well as the recording of the hearing, and found no evidence of ethical misconduct on the part of the hearing officer or the judge.

The complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: April 21, 2009.

FOR THE COMMISSION

Executive Director

Copies of this order were mailed to the complainant and the judge on April 21, 2009.

This order may not be used as a basis for disqualification of a judge.

December 15th, 2008

RE: Complaint against Hearing _____ and Judge _____

To Whom It May Concern:

I wish to bring before you a complaint against Hearing Officer _____ and Judge _____ in the matter of _____ vs. _____. The Hearing Office and the Judge violated the Code of Judicial Conduct, Canons 1-3.

Facts proceeding up to the Hearing

Mr. _____ had been one of our tenants for many years. His current lease was due for renewal on May 1st, 2008. Mr. _____ came to meet with myself and my Husband, _____, I believe sometime in April. He stated that he didn't want to renew his lease and wanted to look for a cheaper place to live. We told him that we did not do any month to month type of arrangements; we only did twelve month leases. He asked us to give him some time to locate another place to live. We agreed that we would go month to month for a period of three months, but at the end of the three months, if he still didn't find another place to live, that we expected him to sign the lease for another year. He agreed.

Mr. _____ was set up on a debit program where I manually debit his rent from his checking account on the first of the month. On May 31st, 2008 I set up Mr. _____ June rent payment to be deducted from his checking account on June 1st, 2008. I had absolutely no idea that Mr. _____ had vacated the home; I had received no notice verbal or written from Mr. _____ stating that he was moving out. All I knew is that in April, Mr. _____ had expressed a desire to move, but had no place in mind, and definitely no specific move out date in mind.

Mr. _____'s checking account had become overdrawn and he called and complained. I told him that I didn't even know that he was gone, and that I didn't even have the keys to my property returned to me. Mr. _____ wanted his June rent returned to him. I told him that he is required to give me a 30 day written notice and also to return the keys to the property. Mr. _____ refused to return the keys to us, but finally relinquished them to us on June 7th, 2008.

In August, 2008, Mr. _____ filed a complaint against my Husband, _____, in Small Claims Court.

_____ and I have never even been to court, all we knew about court was what we have seen on TV. We didn't do any research on the matter since we knew that we had followed the Arizona Residential Landlord and Tenant Act in reference to Mr. _____. We knew that Mr. _____ had violated the same act.

Hearing Officer began hearing the complaint. We were given 30 minutes for the entire proceeding. Ms. immediately became confused on the subject matter and wasted approximately 1/3 the allotted time trying to understand an issue that was never part of either side's complaint. Ms. wasted valuable time in trying to gather facts about the security deposit. Neither side made any mention of the security deposit. Ms. was confused on the issue at hand and remained so the entire time.

Ms. asked for documents that I had no intention of presenting to her. She kept the originals of these documents. When I asked for them to be returned to me, she stated that I should have made copies of the documents.

Ms. ruled against us in the matter stating the Mr. gave us a VERBAL notice. This is in violation of the Residential Landlord and Tenant Act.

I filed a motion to vacate the judgment on November 5th, 2008, based on the fact that Ms. ruling was in violation of the law. I enclosed a copy of the law that pertained to the issue, and asked for my original documents or a copy, be returned to me. I made the document request on a separate sheet of paper on the advice of the clerk who was processing my motion to vacate the judgment.

Judge denied my request to vacate the judgment without explanation and made no mention of my document request.

The Complaint

Hearing Officer has violated The Arizona Code of Judicial Conduct 1993 Canon 1 section A; she has diminished public confidence in the judiciary and done injury to the system of government under law by not complying with the law. ARS 33-1313 Section B "a notice to a landlord must be delivered in hand or mailed by registered or certified mail to the place of business of the landlord". Under ARS 33-1375 Section B "The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty days prior to the periodic rental date specified in the notice." Nowhere in the Arizona Residential Landlord and Tenant Act, is a "verbal 30 day notice" permitted. At no time during our hearing did my Husband, , waive his rights under the law. Hearing Office stripped Mr. of his rights and protections under the law. Further, under ARS 33-1314 Section D the tenancy of Mr. was defined by a lease to be on a monthly basis. Under ARS 33-1371 Section A "a landlord is not required to accept a partial payment of rent or other charges." Ms. ruled that since Mr. did not turn in his keys until the 7th of the month, Mr. was only able to retain the amount of rent equal to 7 days of Mr. 's monthly rent. Ms. forced Mr. to accept a partial payment of the June 2008 rent due. This is clearly a violation of Mr. 's rights under the Arizona Residential Landlord and Tenant Act. Hearing Officer has violated Canon 2 Section A, she has not respected and complied with the Law and she has not acted in manner that promotes public confidence. Ms. held Mr. accountable to the Arizona Residential Landlord and Tenant Act, but she denied him is rights and protections under the law.

The public will have no confidence in the Judiciary if Hearing Officers and Judges strip people of their rights and then tell them that there is no appeal available to rectify the situation. (Small Claims Court has no appeals) Hearing Officer [redacted] violated Canon 3 Section B(2) she was not faithful to the law and apparently does not maintain professional competence to it. Ms. [redacted] also violated Canon 3 Section B(5) by allowing her own prejudices to confuse her as to the issue at hand. Ms. [redacted] wasted 1/3 of the allotted hearing time by trying to interject her own agenda, the security deposit, when neither plaintiff nor defendant had mentioned the security deposit on the complaint. Did Ms. [redacted] have an unfortunate rental experience? Did she have a problem in getting her security deposit returned at some point in time? Was she interjecting her bias from another hearing? Why would she pursue an issue not brought forth by either side? Her bias caused her to be confused on the issue and Mr. [redacted] is now suffering for it.

Judge [redacted] has violated the Arizona Code of Judicial Conduct 1993 Canon 1A Commentary, Judge [redacted] had the opportunity to fix Ms. [redacted] obvious mistakes in violating the law and wrongfully stripping Mr. [redacted] of his rights and protections under the law. I filed a Motion to Vacate judgment on behalf of Mr. [redacted] on November 5th, 2008. Judge [redacted] denied the motion without stating any reason. This is either extreme laziness or Judge [redacted] knew that there was no law that she could cite to support her denial. The Commentary states that "A judicial decision or an administrative act later determined to be incorrect as a matter of law or as an abuse of discretion is not a violation of this code unless done repeatedly or intentionally." I submit to you that the violation of Mr. [redacted]'s rights have been done repeatedly, first by Hearing Officer [redacted], then by Judge [redacted], and that Judge [redacted] intentionally violated Mr. [redacted]'s rights by denying his Motion to Vacate the judgment. Judge [redacted] violated Canon 2 Section A by denying the Motion to Vacate Judgment, the public will have no confidence in the Judiciary when their rights are violated and stripped from them, be told there is no appeal in Small Claims court, and receive denials on any Motion to Vacate Judgments that are in violation of the law. Judge [redacted] violated Canon 3 Section 3 B(2) & (5) & (8), the judgment against Mr. [redacted] obviously violated the law, and the perception is that she would do or say anything to protect one of her own, Hearing Office [redacted]. Judge [redacted] violated Canon 3 Section D (1); she was aware that Mr. [redacted]'s rights had been taken from him but chose to support the misconduct of Hearing Office [redacted]. Judge [redacted] also violated Canon 3 Section B(8) "a judge shall monitor and supervise cases to reduce or eliminate unnecessary costs", since she did not do the right thing and Vacate the judgment I now have to spend more money righting this wrong. Further, Hearing Office [redacted] asked for and kept original documents, the lease, etc. We had no intention of presenting them in the hearing; therefore there we made no copies. All of our original documents have been taken from us. I asked Judge [redacted] to either return the originals or allow me to make copies for the court to keep and return our originals. She didn't even comment on that in her denial. Mr. [redacted] owes us over \$4000.00 in damages to our home and we have no way to file a lawsuit against him to recover the damages since we don't have any of the rental documents.

My husband, [redacted], and I have been financially harmed by the actions of Hearing Officer [redacted] and Judge [redacted]. Our damages are: \$802.50, \$41.00 and 10% per annum from the original judgment against [redacted], damage to Mr. [redacted]'s reputation, \$24.00 for the filing fee on the Motion to

Vacate Judgment, wasted by Judge , and over \$4000.00 in damages to the home that we are unable to recoup due to Ms. taking our original documents and Judge refusing to return them.

Hearing Office and Judge willfully and wrongfully denied Mr. his rights under the Arizona Residential Landlord and Tenant Act. We are hereby demanding them to be restored to us.

A side note.

Since this has happened to us, we now gather and network with others just like us. (Landlords) I can tell you that there is no confidence in the Small Claims court proceedings. Many have complained that the law is not followed and since there is no appeal, people just won't go there anymore. People don't want to spend as much time as I have researching the law and on how to file a complaint. All cases will be transferred to Justice Court and I am sure that there will be a large backlog due to situations just like ours.

Thank you for your time,