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TO: The Honorable Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division Staff

RE: Himelhoch Apartments Landlord/Tenant Issues

DATE: July 19, 2024

Council Member Waters requested that LPD evaluate options regarding longstanding disputes about alleged safety, habitability, fairness and discrimination, retaliation, and practical obstacles to remedying such poor housing conditions - affecting numerous tenants at Himelhoch Apartments.

Council Members Waters and Santiago-Romero's staffs have been communicating with tenants at Himelhoch Apartments for some time now; indeed this property was apparently a focus of significant work in District 6 predecessor Council Member's office. In general, these tenants have long appreciated City Council's power to help them pressure their landlord for decent living conditions, primarily understood as a condition of this developer's requests for public support of its investments.

Recently, via the attached memo dated July 10, 2024, the building's tenants council stated that the current owners have cut off communication with them, and outlined several current and serious concerns:

- Safety of the current entrance, including failure of an exterior door to reliably lock, locating the only available entrance in an alley where criminal activities, filth and lighting are constant safety and health concerns;
- Failing to address dangerous and undesirable conditions that are forcing residents to leave, benefiting the owners who can then rent their vacated units at higher rates;
- Exploiting disputes between tenants to threaten and retaliate against them for complaining about mismanagement, rather than addressing issues appropriately, in an apparent effort to drive tenants out and raise rents; and

- Even retaliating against residents for contacting elected officials about their issues.

The particular nature and complex facts of this particular referral highlight critical limitations on the role and extent to which City Council and staff can act effectively as advocates for tenants in the position of these residents of Himelhoch Apartments. **Essentially, these tenants need a lawyer representing them** as much as they need City Council to provide policy, political and public awareness in their support. In the short term, perhaps one of the best ways City Council and staff can materially assist these tenants is to seek to connect them with qualified counsel.

In preliminary discussions with Council staff, housing legal counsel for Detroit tenants, and one Himelhoch tenant, it appears that these residents' somewhat complex legal challenges may involve multiple concerns, including applicable regulations of the United States Department of Housing and Urban Development (HUD).

In enacting the Right to Counsel Ordinance and the new Landlord/Tenant Commission and otherwise, City Council has clearly called for better living conditions for Detroit residents in the ongoing housing crisis. But Himelhoch residents may not be able to wait for policy reforms to be adequately defended in these ongoing, long term disputes with a large corporate landlord involving their housing. Therefore taking steps to connect them to legal counsel must be a priority.

With an attorney who undertakes to represent them, but not in the context of public officials like council members and staff, these Himelhoch residents should have an adequate opportunity to discuss these and other issues and develop a strategy to represent and defend their rights under existing law and circumstances, while public officials in state, local and federal legislatures work to craft and pass additional protections.

In particular, and in addition to the usual public protest tactics of less powerful groups, regulations and / or statutes governing the US Department of Housing and Urban Development (HUD) may provide some administrative remedies, which should be explored on an urgent basis with their own counsel because there is little City Council or its staff can do in that regard. Issues involving vouchers provided or withheld from residents as an incentive to drive them out are beyond anything City Council can intervene in, but they may be critical points of leverage that they can use with their attorney if they have one. And whether or not federal, state, local, or some or all levels of government have further involvement in their situation should ideally await an opportunity for them to explore their current rights.

Some potential sources of attorneys for these residents:

1. United Community Housing Coalition
2727 Second Ave. Suite 313, Detroit, MI 48226
(313) 963-3310 help@uchcdetroit.org
2. Legal Aide and Defenders Assn.
613 Abbott Street, Ste. 630,
Detroit, Michigan 48226
313.967.5555 – Administration
313.967-5800 – For Legal Assistance
877-964-4700 – For Legal Assistance
3. State Bar of Michigan

Lawyer Referral Service (800) 968-0738

Modest Means Program: <https://lrs.michbar.org/LRS-Info/Modest-Means-Program>

(The State Bar's Landlord/Tenant Real Estate Law Section's is attached)

4. Detroit Justice Center
4731 Grand River Ave. Suite #200
Detroit, MI 48208
Phone: 313-736-5957

July 10, 2024

From: The Himelhoch Tenants Council

To: The members of the Detroit City Council Planning & Economic Development Committee

Dear Council Members;

We have come before you on numerous occasions seeking your help resolving safety issues at the Himelhoch Apartment Building. We appreciate the considerable assistance that you have already given us. Unfortunately, several of these issues are still unsolved. Himelhoch is owned by American Community Developers ACD, and managed by Independent Management Team IMT. Since both of these corporations have cut off meaningful communications with us, we still need your help.

1. The external doors to our building do not lock reliably and they have refused to hire security guards until they have fixed them. We have been trying to work with management on this issue ever since these owners took over. They replaced the doors and locks when they bought the building. There has been some improvement, but we still find the doors unlocked on a regular basis. This was never a problem before they bought Himelhoch. As of this writing, they work most of the time when entering the building, but fail to lock when leaving the building if you open the door manually. The recently installed a button that must be pushed to unlock the door manually. There are now two (2) buttons near the inside of the door, this new one, and the “handicapped” button. If you use the “handicapped button it will usually lock. Many residents don’t want to use the “handicapped” button because it stays open for a very long time. People who do not belong in the building often try to push their way past us when we open the door. If the extra button confuses you, it also confuses us. All we want are locks that lock whenever the door is closed and open in a normal way.

2. There are two (2) external doors at Himelhoch, One (1) on Woodward and one (1) in the alley on the south side of the building, about 10 feet or so into the Alley off Washington Blvd. We need to be allowed to use the building door on Washington Blvd. Which was taken from us when ACD came in. The retail space is empty and has been so since they “remodeled” the ground floor. But we feel this is necessary for us to be safe. Sex workers regularly use the alley with their Johns. People urinate and defecate in the alley and the Management doesn’t clean it up until we complain.

3. Since, with your help, we stopped ACD from forcing half of our building to move to their new “Brush Watson” Building. Presently the ACD has permitted a dangerous and violent environment to develop here at Himelhoch. On November 16th 2023 A resident attacked one of our leaders during a Tenant Council meeting. The on site manager told us and the investigating detective that they have a “policy of zero tolerance for violence” and they would remove the attacker as soon as possible. Within days they changed their tune. The attacker is still here and continues to intimidate and threaten the witnesses who came forward. We later found out that there was another similar incident where a resident was so badly frightened by one of her neighbors that she moved. The ACD is or soon will be renting that apartment at market rate.

They have already Charged a Resident market rate for one (1) month because the management did not do repairs in a timely manner and the resident was not able to Pass a MSHDA inspection to qualify for her Voucher in January 2024. Over the years, we have worked with several community police officers, who often attend our meetings. They have all agreed that we are correct in our understanding of our situation and the danger that we are in. You should have a report from one of them who has spoken to council staff.

There have been several incidents where two tenants charged each other with excessive noise complaints. Even though in most of these cases it was clear with the guilty party being obvious. with documented proof of who the guilty party was and Management's response was to tell all parties that if either of them complained in the future, that they both would be evicted.

4. For many years we had a good working relationship with Mr. Michael Dersa, a Vice President at IMT. We certainly did not receive the answers we wanted all of the time. But he didn’t abuse us as several of his colleagues have. When we pushed back against being forced to move to Brush Watson, Mr. Dersa was told to stop all communications with us. After we received Promises that the “vouchers” that allowed us to stay at Himelhoch would be forthcoming, Mr. Michael Essian from ACD stepped forward offering to resolve any issues that the on sight manager could not. We met with him once, in May of 2023. The meeting seemed promising. We were delighted because he is the only person from ACD who ever talked to us. By February or March of 2024 many of the commitments that he had made to us had not been kept.

Mr. Essian responded to a phone call seeking the assistance that he had promised, with hostility. He made it clear that his “cooperation was dependent on our not talking to our Elected Officials.

We have been told that ACD will be asking your committee to approve a major “Tax Abatement” for a new project of theirs. We understand the housing crisis in our country. We also know that it is worse in Detroit.

We hope you will be able to help us get some resolution to the four (4) Problems that we have addressed in this statement.

1. Reliable door locks on the two entrances at Himelhoch.
2. Getting the use of Washington Blvd. door NOT in the Alley.
3. Getting the Bad Actors out of the building.
Establish a Policy for Attacks, threats of Physical Violence and verbal assaults.
ACD and IMT have NO policy in place at the present time.
Therefore, there are NO consequences for the Attacks on Residents, Physical or Verbal Intimidations.
4. Helping us to Re-establish a useful channel of communication between our Tenants Council with the ACD and IMT.

Respectfully submitted;

Himelhoch Tenants Council
Steering Community

TENANT – LANDLORD INFORMATION:

PROPERTY MAINTENANCE AND REPAIRS TO RENTAL PROPERTY

I. Overview

Both landlords and tenants have rental property maintenance responsibilities. Under Michigan law, a landlord is obligated to keep rental property in reasonable repair and fit for its intended purpose, and to comply with applicable health and safety laws. MCL 554.139. (For multifamily property rental units in cities and townships with populations of 10,000 or more, the “housing law of Michigan” also imposes repair duties on landlords. See MCL 125.471). The law imposes these obligations even if they are not included in the lease agreement or there is no written lease agreement.

Tenants are generally expected to assist the landlord in maintaining the premises in a safe and sanitary condition, and to promptly notify the landlord of maintenance problems that require attention. Whether a tenant inspects the rental unit before the tenancy begins does not eliminate the landlord’s repair obligations. The landlord and tenant may modify these obligations in certain circumstances by mutual agreement, but only when the lease has a term of at least one year.

When the disrepair or violation of health or safety laws is caused by the tenant’s willful, irresponsible conduct or lack of conduct, the landlord is not responsible for the repairs that conduct makes necessary.

II. What to Do about Maintenance and Repair Problems

If a landlord is not maintaining the rental property in line with its obligation, a tenant should first try to discuss the matter with the landlord. If after an initial discussion, the landlord does not address the repair issue(s), the tenant should send a letter to the landlord. A letter should restate the problems discussed earlier and mention any new ones, and ask that the landlord promptly respond to them.

KEEP GOOD RECORDS – The tenant should keep a written list of the repair problems, the date they were first noticed, and the date the landlord was notified about them. Tenant notes could also include a summary of what repairs, if any, the landlord (including its employees and contractors) made and whether they corrected the problem(s).

Photographs are an excellent way to document repair problems in the rental unit and the common areas of the property (i.e., shared hallways, walkways, courtyards, parking lots, etc). The nature and location of the problem and the date on which the photograph was taken should be noted.

The tenant should send all letters to the landlord via certified mail, return receipt requested (or at least, get a certificate of mailing), and should keep a copy of all correspondence (whether sent or received).

III. When The Landlord Will Not Make Repairs

If the landlord does not maintain the rental unit as required by the lease agreement and Michigan law, the tenant has a few different options: (1) contact the city or township building/housing department to request an inspection; (2) withhold rent; (3) make repairs and deduct the costs from the rent payments; or (4) terminate the lease/tenancy and move out; (5) sue the landlord in court for an order to make repairs, and money damages.

If a tenant takes any of these steps, he or she should be protected against a termination of tenancy action by the landlord under Michigan's retaliatory eviction defense law, MCL 600.5720. This law does not permit entry of a termination of tenancy judgment against a tenant where the filing of the case was intended primarily as a penalty for the tenant's attempt to exercise its rights under the law (which each of the following steps are).

a. Making a Complaint to the Local Building/Housing Department

If the local government (city or township) has a building or housing department that conducts rental housing inspections, the tenant can make a complaint to the department, upon which the department can conduct an inspection of the rental property to determine whether it complies with the housing code.

b. Withholding Rent

If the landlord does not maintain the rental unit in good and reasonable repair, the tenant may withhold rent payments. Before withholding rent, the tenant should send the landlord at least one letter identifying the needed repairs and telling the landlord that rent will be withheld if the repairs are not made. (It's best to send one letter listing the repair problems and threatening withholding if they aren't corrected, and if they are not, sending a second letter to say that withholding will begin with the next month's rent unless repairs are made.)

If, despite getting one or more letters listing repair needs and threatening withholding of rent if those repairs are not made, the landlord still fails to make the repairs within a reasonable time, the tenant may establish a separate account (sometimes called an "escrow account") at a financial institution (for example, a bank or credit union) and deposit the rent money into that account. The tenant should send the landlord a letter informing him or her of the account and stating the some or all of the money will be released to the landlord after the problems have been corrected.

The landlord may challenge the tenant's right to withhold rent by bringing an eviction action for failure to pay rent. The tenant, however, has a valid defense to eviction if he or she can prove that the landlord received notice of the needed repairs and failed to take action within a reasonable time. If the court agrees and finds tenant's actions to be justified, a nonpayment of rent judgment will not be entered against the tenant. Again, it is important to keep good records of all the steps taken before withholding the rent.

c. Repair and Deduct

A tenant may make repairs and deduct the cost from the rent in certain instances where the landlord fails to make such repairs. In order to exercise this right, there must be:

- (a) A duty to repair provided by statute (MCL 554.139, MCL 125.471).
- (b) A notice to the landlord by the tenant that repairs are needed *or* actual knowledge by the landlord of the needed repairs.
- (c) The failure of the landlord to make the repairs within a reasonable time after receiving notice about the problem, or otherwise knowing about it.

If these three conditions exist, the tenant could obtain written estimates of the repair costs. The tenant could then send a letter informing the landlord of the estimates and stating that the repairs will be made and their costs deducted from the rent unless the landlord makes the needed repairs by a specified date.

If the landlord still does not make the repairs by such date, the tenant may have the repairs completed and deduct the costs from the rent payments. The tenant should inform the landlord when the repairs are completed and should send copies of repair related receipts to the landlord.

As with withholding rent, the landlord may challenge the tenant's right to deduct the cost of the repairs and file a nonpayment of rent eviction action. If, however, the tenant has kept good receipts and records (including {6600187:}

copies of notices and any responses from landlord), the tenant should be able to convince the court that repair and deduct was justified. But, if the court disagrees with the tenant's repair and deduct decision, it may say the tenant is responsible for payment of the rent deducted to make repairs.

d. Terminate the lease and move out

If the landlord's lack of action in responding to repair issues is a substantial breach of its repair obligations, and the tenant is deprived of the beneficial use and enjoyment of the rental property, the tenant may terminate the lease and move out. This is often referred to as *constructive eviction*. For example, if the landlord fails to provide adequate heat or correct significant repair problems after it received notice from the tenant about the problem (or knew or should have known about it), the tenant could be justified in terminating the lease and moving out. A tenant should inform the landlord in writing of a decision to terminate the lease for this reason. Again, if a court disagrees that there was a good enough reason for the tenant to terminate the lease, the tenant may be found liable to the landlord for rent for the rest of the lease term.

e. Sue the landlord for an order to make repairs and money damages

Another step or remedy that a tenant can take if the landlord does not maintain the rental unit in good and reasonable repair is to file a court complaint against the landlord and ask the court to order the landlord to make repairs (that type of order is called "injunctive relief") and award the tenant money damages for the diminished value of the rental and for any properly loss or harm due to the landlord's repair failures. Filing a court complaint, especially one that asks for injunctive relief, is not easily done, but it is an option. The "housing law of Michigan" provides a way to file a court complaint asking for money damages and injunctive relief. See MCL 125.536. There are other ways, too. If a tenant doesn't have electrical, heat, or water service because of a landlord's action or inaction, the landlord could be liable for money damages and an order to restore the service under the "lockout" law, MCL 600.2918. There are other theories under which tenants can seek to recover money damages, including breach of contract.

This pamphlet should not be used in place of legal assistance. In the event of a landlord / tenant dispute, seek legal advice.

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