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October 20, 2015

Via Email: clayp@rpoaonline.org
Clay B. Powell
Rental Property Owners Association of Kent County
1459 Michigan Street NE
Grand Rapids, MI 49503

Re: Residential Rental Inspections - *Baker v. City of Portsmouth*

Dear Clay,

I reviewed the *Baker v. City of Portsmouth* opinion you sent me in your October 12, 2015 email.

In *Baker*, the City of Portsmouth adopted a Rental Dwelling Code ("RDC") in 2012. Portsmouth adopted the RDC because it believed "many families are living in unsafe and unsanitary conditions, unaware of their legal rights regarding housing conditions and/or afraid to complain about such conditions."

Per § 1361.02(A) of the RDC, "[i]nspections are conducted at least once a year and on a minimum of forty-eight hours' notice, unless the time period is waived by the tenant or occupant." The RDC authorized an inspection (1) in response to a complaint, or (2) if the Code Enforcement Official had a valid reason to believe that a violation existed. The scope of the inspection was limited to eighty search items. A failure to respond to contacts from the City to schedule an inspection resulted in a letter being sent to the property owners threatening "possible issuance of [a] misdemeanor citation."

The plaintiffs in *Baker* were rental property owners. The property owners filed a complaint arguing specifically that the RDC violated their Fourth Amendment rights by mandating warrantless inspections of their properties without probable cause. The court agreed, holding that the RDC's failure to include a warrant provision violated the Fourth Amendment. *Baker et al v. Portsmouth*, Ohio City of et al, No. 1:2014cv00512 - Document 36 (S.D. Ohio 2015).

First, this case does <u>not</u> say that all rental inspection ordinances have been found to be unconstitutional. What the case does say is that the RDC cannot authorize a warrantless search that imposes criminal penalties on a subject that chooses to exercise their Fourth Amendment rights by requiring the City to obtain a warrant.

Residential rental inspections can still be made with or without a warrant. However, if the subject of an inspection insists that it be supported by a warrant, then the subject cannot be constitutionally convicted for refusing to consent. If the subject refuses to consent to an inspection then the city must get a warrant. The ordinance simply cannot authorize a warrantless inspection that provides penalties to subjects that choose to exercise their Fourth Amendment rights.

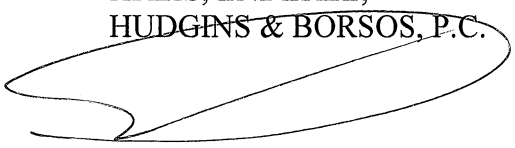
Also, the City's inspection is classified as an administrative search. Administrative searches require a much lower probable cause standard for warrant issuance. In fact, the court in *Baker* listed factors such as the "passage of time, the nature of the building, [and] the condition of the entire area" as probable cause justifications in this context.

All of this essentially means that (1) cities can still schedule inspections without a warrant, (2) subjects of the inspections have the right to require a warrant without fear of criminal penalties or fines, and (3) cities will have little trouble in obtaining a warrant when needed.

Remember, this case is from an Ohio District Court interpreting Ohio law. The opinion is not published and is only instructive in Ohio and Michigan. But if Michigan has substantially similar ordinances, it may prove as persuasive authority in challenging those ordinances.

Very truly yours,

KREIS, ENDERLE,
HUDGINS & BORSOS, P.C.



David C. Hill

DCH/jw