

How Does the Commonwealth Court’s Decision in Landlord Service Bureau v. City of Pittsburgh Affect Rental Licensing Ordinances in PA?

On March 17, 2023, the Commonwealth Court issued an opinion in Landlord Service Bureau, et al., v. City of Pittsburgh (No. 1026 C.D. 2021) invalidating Pittsburgh’s Residential Housing Rental Permit Program under the so-called “Business Exclusion” of the Pennsylvania Home Rule Law. A number of municipalities throughout Pennsylvania have adopted rental inspection and licensing ordinances and may wonder how this decision affects those laws.

The Home Rule Law (53 Pa.C.S. § 2901, *et seq.*) gives municipalities that adopt a home rule charter broad authority to exercise any and all powers and functions of government that are not denied by the Pennsylvania Constitution, the home rule charter or an act of the General Assembly. The law lists several exceptions to this broad grant of power. One such exception is what has come to be called the “Business Exclusion” (53 Pa.C.S. § 2962(f)), which states that home rule municipalities may not “determine duties, responsibilities or requirements placed upon businesses, occupations and employers” unless state authorization to enact an ordinance that may impose such a burden is “expressly provided by statutes which are applicable in every part of this Commonwealth or which are applicable to all municipalities or to a class or classes of municipalities.”

The Commonwealth Court held that several features of Pittsburgh’s rental licensing ordinance imposed affirmative duties, requirements and responsibilities on landlords and were not authorized by any statute. The Court reaffirmed prior decisions upholding rental inspection and licensing ordinances but invalidated the Pittsburgh ordinance “in its present configuration.” The features that the Court found to exceed the City’s Home Rule authority are:

- Inspection without permission of an owner and lessee
- Requirement that landlords hire a responsible local agent
- Requirement to follow best practices
- Requirement to attend a landlord academy
- Posting of certain registration and inspection information on a public, online database¹

So what affect, if any, does the *Landlord Service Bureau* ruling have on existing rental inspection and licensing ordinances? The answer depends on a number of variables.

The ruling is applicable only to Home Rule municipalities.

The issue that the Court considered in *Landlord Service Bureau* was the power conferred and limitations imposed by the Pennsylvania Home Rule Law. Rental inspection and licensing ordinances that were adopted pursuant to a different statutory authority are unaffected by the ruling.

¹ *Landlord Service Bureau*, p. 24.

It's possible to read *Landlord Service Bureau* as implying that the features of Pittsburgh's ordinance that the Court struck down exceed the scope of the police power that municipalities have to protect the health and safety of their residents. Pittsburgh argued that its ordinance was a valid exercise of police power, and that as a Home Rule City it should not be held to have lesser powers than non-Home Rule municipalities. The Court rejected that argument. The Court's ruling, however, was grounded in the Business Exclusion and did not rely upon a finding that the stricken provisions exceeded the police power.²

Municipalities that have rental inspection and licensing ordinances would do well to review the source of legal authority to enact those ordinances and ensure that they are not grounded solely in the Home Rule Law or general municipal police power.

There's express statutory authorization that the Commonwealth Court failed to consider.

The Business Exclusion does not apply if authorization to enact an ordinance is "expressly provided by statutes which are applicable ... to a class or classes of municipalities."³ *Landlord Service Bureau* did not discuss any statutory authorization, perhaps because none was offered. There is at least one express delegation of power to enact building health and safety ordinances that municipalities can and should raise in the event of a challenge: the Municipal Housing Ordinance Authorization Law, [53 P.S. §§ 4101, et seq.](#) ("MHOA"). The MHOA delegates broad powers to multiple classes of municipalities "to enact and enforce suitable ordinances to govern and regulate the...occupation, maintenance ... use and inspection of all buildings and housing...."⁴ This delegation of power is comparable to the one contained in the Disease Prevention and Control Law of 1955, which the Pennsylvania Supreme Court held to confer express authority to require certain employers to provide paid sick leave.⁵

The features of Pittsburgh's ordinance that the Commonwealth Court struck down may be, and often are, drafted differently.

Municipalities that have rental inspection and licensing ordinances with provisions that are similar to the ones invalidated by the Commonwealth Court would do well to determine whether those provisions are drafted the same as those that the Court struck down.

Inspection without permission or a warrant

² *Landlord Service Bureau*, p. 20 ("[E]ven if the police power authorizes the Rental Ordinance, that power, in turn, is limited by Section 2962(f) of the Home Rule Law") and p. 24 (The specified provisions of Pittsburgh's ordinance place affirmative duties, responsibilities and requirements upon landlords, and the City has not identified a statute that expressly authorizes such wide-ranging regulation of the residential landlord business as required by Section 2962(f)).

³ 53 Pa.C.S. § 2962(f). Note that the Commonwealth Court incorrectly characterized this standard as requiring a statute applicable *in every part* of the Commonwealth on page 24 of the opinion.

⁴ 53 P.S. § 4101

⁵ [Pa. Rest. & Lodging Ass'n v. City of Pittsburgh](#), 211 A.3d 810, 832 (Pa. 2019) ("DPCL's legislative authorization to municipalities to 'enact ordinances . . . relating to disease prevention and control' [is] sufficiently clear to satisfy the limited exception to the Business Exclusion.")

Pittsburgh's [Residential Housing Rental Permit Program](#) requires landlords to allow the City to inspect their properties every three years.⁶ The ordinance does not provide any process or standards for the City to obtain an administrative warrant in the event that a landlord or tenant refuses entry. If entry is refused, the landlord is subject to a fine.

Many rental inspection and licensing ordinances either provide for an administrative warrant or do not make the refusal to allow entry a punishable offense. In [Simpson v. City of New Castle](#), 740 A.2d 287 (Pa. Cmwlth. 1999), the Commonwealth Court upheld an ordinance that required landlords to apply for a residential rental occupancy permit every two years, with issuance of the permit conditioned upon the passing of an inspection. If the landlord or tenant refuses entry, the permit will not be issued and the landlord is prohibited from renting the property. The Court upheld this scheme, stating: "Because under this permit process no physical intrusion into landlord's property necessarily occurs unless permitted, the [federal and state constitutional] prohibitions against an illegal search and seizure are not implicated."⁷ *Landlord Service Bureau* mischaracterized *Simpson*, but did not overrule it.⁸

Requirement to hire a responsible local agent

Pittsburgh's rental licensing ordinance states that no person may lease a rental unit for occupancy without first designating a local responsible agent. The Commonwealth Court interpreted the ordinance as requiring property owners who reside outside of Allegheny County to designate a licensed property management company within the County.⁹ The language of the ordinance seems to require all landlords to designate a responsible local agent, who may be *either* a natural person residing in Allegheny County *or* a professional, licensed real estate management firm with a place of business within the County.¹⁰

It is not uncommon for rental licensing ordinances to require non-local landlords to designate a responsible local agent. It *does* seem to be uncommon for rental licensing ordinances to require that the agent be a licensed property management company. Whether this distinction was relevant to the Commonwealth Court's decision in *Landlord Service Bureau* is unclear. To be on the safe side, municipalities whose rental inspection and licensing ordinances require out-of-county landlords to designate a responsible local agent should be prepared to cite statutory authority that empowers them to impose such a requirement. Having a local person with the ability to respond to problems affecting an occupied property as they arise has such an obvious relationship to the public health, safety and general welfare that the requirement should easily fall within the authorization provided by the MHOA.

Requirement to follow best practices and attend a landlord academy

Pittsburgh's rental licensing ordinance requires the Department of Permits, Licenses and Inspections to promulgate "proposals for creating a manual of good landlord practice; creating a performance-based

⁶ Pittsburgh Residential Housing Rental Permit Program §§ 781.03(e)(2) and 781.04.

⁷ *Simpson*, 740 A.2d at 290-91.

⁸ *Landlord Service Bureau*, p. 22 (Stating that the *Simpson* Court upheld New Castle's inspection scheme because a warrant was required, when in fact *Simpson's* reference to the availability of a warrant was *dicta* and did not form the basis of the Court's holding).

⁹ *Landlord Service Bureau*, p. 4 ("Rental property owners domiciled outside of Allegheny County must hire a licensed real estate management firm in Allegheny County") and p. 19 ("The local agent must be a property management company located in Allegheny County").

¹⁰ Pittsburgh Residential Housing Rental Permit Program § 781.01(l).

regulatory system; creating landlord academy; creating incentives to encourage ‘good landlords;’ and other best practices in the field of rental licensing.”¹¹ In *Landlord Service Bureau*, the Commonwealth Court stated “*To the extent this will require participation of landlords*, it is a training that was held to be unauthorized for building managers in *Pennsylvania Restaurant and Lodging Association*.”¹²

Municipalities that wish to encourage the use of good rental practices should probably ensure that such encouragement takes the form of incentives, not mandatory requirements.

Posting personal and private information on a public, online database

Pittsburgh’s rental licensing ordinance states that the Department of Permits, Licenses and Inspections “shall create an online database where information related to rental properties and their inspections shall be made available to the public.”¹³ The Commonwealth Court interpreted this as requiring that “contact information for all property owners of the unit, the responsible local agent, the person authorized to collect rents, the person authorized to order repairs or services for the property, and any lienholders ... will be put into a public, online database.”¹⁴ The Court did not explain how it arrived at this conclusion. In any event, municipalities would do well to ensure that their rental inspection and licensing ordinances do not provide for the disclosure of personal and confidential information on a public database.

Bottom line.

Landlord Service Bureau should have little effect on the validity of existing rental inspection and licensing ordinances, especially for non-Home Rule municipalities. The ruling should affect only those municipalities whose authority derives from the Pennsylvania Home Rule Law *and* whose ordinances contain provisions that are drafted similarly to those that the Court invalidated. Even then, in the event of a legal challenge, Home Rule municipalities can and should cite the Municipal Housing Ordinance Authorization Law as providing express statutory authority to enact rental inspection and licensing ordinances that impose burden on landlords.

¹¹ Pittsburgh Residential Housing Rental Permit Program § 781.06(b).

¹² *Landlord Service Bureau*, p. 20 [emphasis added].

¹³ Pittsburgh Residential Housing Rental Permit Program § 781.06(c).

¹⁴ *Landlord Service Bureau*, p. 22, fn. 5