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Item Number: 49

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PUBLIC UTILITY COMMISSION
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COMPLAINT OF ERIC ELLIS
AGAINST WESTLAKE GARDENS
APARTMENTS

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PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER

This Order addresses the complaint Eric Ellis filed against his landlord, AV Brickell Pointe, Ltd. (the Westlake Gardens Apartments), alleging that Westlake Gardens Apartments overbilled for water and sewer service, failed to properly bill, and failed to properly disclose information. In the proposal for decision, the administrative law judge (ALJ) recommended that the Commission deny Mr. Ellis’s complaint in part and grant Mr. Ellis’s complaint in part. The Commission adopts the proposal for decision, including findings of fact and conclusions of law, to the extent provided in this Order.

The Commission makes non-substantive changes for such matters as capitalization, spelling, grammar, punctuation, style, correction of numbering, and readability.

I. Findings of Fact

The Commission adopts the following findings of fact.

Parties

1. AV Brickell Pointe Ltd. is a Texas limited partnership registered with the Texas secretary of state under file number 6417110.
2. AV Brickell owns an apartment house called Westlake Gardens Apartments in Fort Worth, Texas.
3. Mr. Ellis is an individual who entered into a rental agreement with AV Brickell to reside at the Westlake Gardens Apartments.
4. Mr. Ellis lived at the Westlake Gardens Apartments from June 4, 2022 through March 31, 2024.

The Complaint

5. On October 3, 2023, Mr. Ellis filed the formal complaint at issue in this proceeding alleging that from January 20 through December 20, 2023, Westlake Gardens Apartments failed to

- render allocated bills in accordance with Texas law and is unlawfully billing tenants for utility charges separate from rent.
6. In his formal complaint, Mr. Ellis alleges that Westlake Gardens Apartments:
 - a. failed to bill tenants such that tenant utility charges were separate from rent;
 - b. failed to provide tenants notice of the total utility costs for the complex each month;
 - c. failed to state in writing how the complex allocated the total utility bills and how often tenants were billed for water and sewer utilities; and
 - d. included an unlawful provision in the rental agreement stating “[a]ny monies paid will be applied to utilities first then rent.”
 7. Mr. Ellis seeks a refund of any overcharges and for Westlake Gardens Apartments to be ordered to correct its rental agreement.
 8. On November 22, 2023, Westlake Gardens Apartments responded to Commission Staff’s first RFI and provided the following:
 - a. copies of water rental agreements, including addenda, and an explanation of how it allocated usage;
 - b. copies of bills to Mr. Ellis; and
 - c. the average monthly water and sewer bill for all dwelling units and the highest and lowest bill for the previous calendar year.
 9. On December 11, 2023, Mr. Ellis alleged that Westlake Gardens Apartments violated 16 TAC § 24.283 by not allowing at least 16 days between when a water or sewer bill was mailed or hand delivered to the tenant and when the bill was due. Mr. Ellis requested interest be applied to any overbilling.
 10. On December 14, 2023, Mr. Ellis argued that because Westlake Gardens Apartments did not apply tenant payments to rent before utilities, all monies paid by tenants should be refunded, with interest.

11. On February 2, 2024, Westlake Gardens Apartments responded to Commission Staff's second RFI, providing copies of utility bills to the Westlake Gardens Apartments by its water and sewer utility service provider, the City of White Settlement.
12. On April 11, 2024, Westlake Gardens Apartments responded to Commission Staff's third RFI, answering questions and providing copies of an example month of billing to tenants.
13. On July 11, 2024, Westlake Gardens Apartments responded to Commission Staff's fourth RFI, confidentially providing copies of utility billing ledgers for 2023 and documents demonstrating its allocation methodology.
14. On July 24, 2024, Commission Staff recommended the following:
 - a. during the period that Mr. Ellis complains of, the water and sewer charges by Westlake Gardens Apartments were properly calculated;
 - b. during the period that Mr. Ellis complains of, Westlake Gardens Apartments violated the Commission's rules regarding rental agreement disclosure and billing practices because those sections of Westlake Gardens Apartments' rental agreements were left blank; and
 - c. during the period that Mr. Ellis complains of, Westlake Gardens Apartments violated the Commission's rules regarding the order in which payments are applied to rent and utilities and by improperly including the statement "[a]ny monies paid will be applied to utilities first then rent" in its rental agreement because payments are made directly to AV Brickell, not a third party, and tenants did not designate this billing choice.
15. Also on July 24, 2024, Commission Staff filed a motion for summary decision, stating that there is no genuine issue of material fact and that the evidence shows that Westlake Gardens Apartments properly allocated water and sewer service charges to tenants, including complainant, but failed to comply with the Commission's rules regarding lease disclosures and billing.
16. In Order No. 11 filed on October 8, 2024, the ALJ set October 22, 2024 as the deadline for any party to request a hearing.

17. In Order No. 12 filed on October 22, 2024, the ALJ denied Commission Staff's motion for summary decision.

Sanctions

18. On February 11, 2025, Commission Staff filed a motion for sanctions.
19. No party requested a hearing on Commission Staff's motion for sanctions and no hearing was held on the motion for sanctions.
20. In Order No. 17 filed on April 11, 2025, the ALJ deemed certain facts to be true. For the period from June 4, 2022 through March 31, 2024, Westlake Gardens Apartments failed to include the average monthly bill for all dwelling units in the previous calendar year including the highest and lowest month's bills for that period in its rental agreement.
21. For the period from June 4, 2022 through March 31, 2024, Westlake Gardens Apartments failed to include a description of the company's allocation formula in its rental agreement. For the period from June 4, 2022 through March 31, 2024, the due dates for utility bills by Westlake Gardens Apartments were fewer than 16 days after the bill was mailed or hand delivered to the tenant. For the period from June 4, 2022 through March 31, 2024, Westlake Gardens Apartments applied monies paid by tenants to utilities first, and then rent.
22. Although a factual dispute still exists, no party requested a hearing, and no hearing has been held.

II. Conclusions of Law

The Commission adopts the following conclusions of law.

1. The Commission has authority over this matter under Texas Water Code (TWC) § 13.505.
2. Westlake Gardens Apartments is an apartment house as defined in TWC § 13.501(1).
3. AV Brickell Pointe, Ltd. is the owner of an apartment house as defined in TWC § 13.501(5).
4. At all times relevant to this proceeding, Mr. Ellis was a tenant as defined in TWC § 13.501(6).
5. Mr. Ellis is entitled to bring his complaint under 16 TAC § 22.242(a).

6. As the complainant, Mr. Ellis has the burden of proving the issues raised in his complaint by a preponderance of the evidence under 16 TAC § 24.12.
7. Mr. Ellis did not prove by a preponderance of the evidence that, during the period from January 20 through December 20, 2023, Westlake Gardens Apartments failed to calculate tenant water and sewer charges in accordance with 16 TAC § 24.281(c)(1)(B)(ii), 24.281(e)(2)(A)(i) and (iv).
8. During the period from June 4, 2022 through March 31, 2024, Westlake Gardens Apartments violated 16 TAC § 24.279(a)(4) by failing to include the average monthly bill for all dwelling units in the previous calendar year, including the highest and lowest month's bills for that period in its rental agreement.
9. During the period from June 4, 2022 through March 31, 2024, Westlake Gardens Apartments violated 16 TAC § 24.279(a)(5) by failing to include a description of the apartment's allocation formula in its rental agreement.
10. During the period from June 4, 2022 through March 31, 2024, Westlake Gardens Apartments violated 16 TAC § 24.283(h) by setting due dates for utility bills fewer than 16 days after a bill was mailed or hand delivered to the tenant.
11. During the period from June 4, 2022 through March 31, 2024, Westlake Gardens Apartments violated 16 TAC § 24.283(j) by applying Mr. Ellis's payments to water and sewer utilities first then rent, and by including a clause in the rental agreement that stated, "[a]ny monies paid will be applied to utilities first then rent," without the proper authority to do so.
12. The Commission processed Mr. Ellis's complaint in accordance with the requirements of the TWC, the Administrative Procedure Act,¹ and Commission rules.
13. The proposal for decision was issued in accordance with the Texas Government Code § 2001.062 and 16 TAC § 22.261(a).

¹ Tex. Gov't Code § 2001.001-.903.

III. Ordering Paragraphs

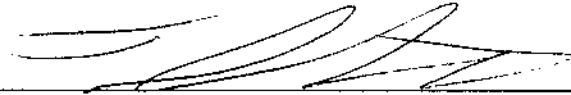
In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission denies Mr. Ellis's complaint with respect to his claim that he was overbilled for water or sewer utility service while a resident at Westlake Gardens Apartments for the period from January 20, 2022 through December 30, 2023.
2. The Commission grants Mr. Ellis's complaint with respect to Westlake Gardens Apartments' disclosures of its billing practices and with respect to Westlake Gardens Apartments' billing practices.
3. The Commission finds that Westlake Gardens Apartments failed to include the average monthly bill for all dwelling units in the previous calendar year including the highest and lowest month's bills for that period in its rental agreement, in violation of 16 TAC § 24.279(a)(4).
4. The Commission finds that Westlake Gardens Apartments failed to include a description of the apartment's allocation formula in its rental agreement, in violation of 16 TAC § 24.279(a)(5).
5. The Commission finds that Westlake Gardens Apartments failed to provide proper disclosures of its billing practices in its rental agreement with Mr. Ellis during the period from June 4, 2022 through March 31, 2024, in violation of 16 TAC § 24.279(a)(4) and (5).
6. The Commission finds that Westlake Gardens Apartments improperly applied Mr. Ellis's payments to water and sewer utilities first then rent, and improperly included a clause in the rental agreement that stated, "[a]ny monies paid will be applied to utilities first then rent." without the proper authority to do so during the period from June 4, 2022 through March 31, 2024, in violation of 16 TAC § 24.283(j).
7. Within 30 days of the date of this Order, Westlake Gardens Apartments must:
 - a. correct its rental agreement with respect to proper disclosures and billing practices as discussed in this Order, and provide corrected water and sewer addenda to current tenants; and

- b. cease applying tenant payments to utilities first then rent, remove the clause from its rental agreement that states, “[a]ny monies paid will be applied to utilities first then rent,” and provide a copy of the corrected pages of the rental agreement to current tenants.
8. Within 45 days of the date of this Order, Westlake Gardens Apartments must file a copy of its corrected rental agreement in Docket No. 57243, *Compliance Filing for Docket No. 55635 (Complaint of Eric Ellis Against Westlake Gardens Apartments)*, and file proof that all required corrected addenda and corrected rental agreement pages have been provided to existing tenants.
9. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

Signed at Austin, Texas the 31st day of July 2025.

PUBLIC UTILITY COMMISSION OF TEXAS



THOMAS J. GLEESON, CHAIRMAN



KATHLEEN JACKSON, COMMISSIONER



COURTNEY K. HJALTMAN, COMMISSIONER