

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
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DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2008 JAN -5 P 2 13

LARRY KORNEGAY,
Tenant/Petitioner,

v.

NOVO PROPERTIES,
Housing Provider/Respondent.

Case No.: RH-TP-08-29439
In re: 3533 Ames Street NE
Unit No. 201

FINAL ORDER

I. Introduction

Tenant/Petitioner Larry Kornegay failed to appear at a hearing that was convened to adjudicate allegations in his tenant petition of violations of the Rental Housing Act by the Respondent/Housing Provider. Because Tenant failed to appear at the hearing after receiving proper notice, and failed to give any explanation for his non-appearance, I dismiss this case for failure to prosecute in accord with the following Findings of Fact and Conclusions of Law.

II. Findings of Fact

1. On September 23, 2008, Tenant/Petitioner Larry Kornegay filed tenant petition ("TP") 29,439 with the Rental Accommodations Division (RAD) of the Department of Housing and Community Development (DHCD) alleging violations of the Rental Housing Act with respect to Tenant's housing accommodation at 3533 Ames Street NE, Unit 201. The tenant petition charged that a rent increase was taken while the unit was not in substantial compliance with the

District of Columbia Housing Regulations and services and/or facilities provided in connection with the rental of the unit had been substantially reduced.

2. On November 18, 2008, this administrative court issued a Case Management Order (CMO) directing the parties to appear for a hearing on January 5, 2009, at 9:30 a.m., at the Office of Administrative Hearings, 941 North Capitol Street, N.E. The CMO cautioned that **“If you do not appear for the hearing, you may lose the case.”**

3. A copy of the Case Management Order was served on Tenant/Petitioner, Larry Kornegay by priority mail with delivery confirmation at 3533 Ames Street NE, Unit 201, Washington, DC 20019, the address Petitioner listed on the tenant petition. The United States Postal Service web site confirmed delivery of the CMO to that address on November 21, 2008, at 4:04 p.m., receipt no. 0307 1790 0002 0920 0877.

4. The case was called for hearing at 9:51 a.m. on January 5, 2009. Tenant/Petitioner Larry Kornegay did not appear. Respondent/Housing Provider appeared and moved to dismiss.

5. Tenant submitted no explanation before or after the hearing for his failure to appear at the hearing.

III. Conclusions of Law

1. This matter is governed by the Rental Housing Act of 1985, D.C. Official Code §§ 42-3501.01 – 3509.07, the District of Columbia Administrative Procedure Act (DCAPA), D.C. Official Code §§ 2-501 – 510, the District of Columbia Municipal Regulations (DCMR), 1 DCMR 2800 – 2899, 1 DCMR 2920 – 2941, and 14 DCMR 4100 – 4399. As of October 1,

2006, the Office of Administrative Hearings has assumed jurisdiction of rental housing cases pursuant to the OAH Establishment Act, D.C. Official Code § 2-1831.03(b-1)(1).

2. Tenant/Petitioner was properly served by mail with the Case Management Order of November 18, 2008, which gave notice of the hearing on January 5, 2009. Because the Case Management Order setting the hearing date was mailed to Tenant's last known address, the address Tenant/Petitioner listed on the tenant petition, Tenant/Petitioner received proper notice of the hearing date. D.C. Official Code § 42-3502.16(c); *Kidd Int'l Home Care, Inc. v. Prince*, 917 A.2d 1083, 1086 (D.C. 2007) (notice is proper if properly mailed and not returned to sender); *McCaskill v. D.C. Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990) (notice sent to the address provided by respondent is adequate to comply with due process); *Carroll v. D.C. Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985) (notice mailed to party at address provided by party and not returned as undeliverable was proper); *see also Dusenbery v. United States*, 534 U.S. 161, 167-71 (2002) (upholding service by certified mail although notice was not actually received). Proceeding in his absence was therefore appropriate.

3. OAH Rule 2818.3, 1 DCMR 2818.3, provides, in part:

Unless otherwise required by statute, these Rules or an order of this administrative court, where counsel, an authorized representative, or an unrepresented party fails, without good cause, to appear at a hearing, or a pretrial, settlement, or status conference, the presiding Administrative Law Judge may dismiss the case or enter an order of default in accordance with D.C. Superior Court Civil Rule 39-I.¹

¹ Super Ct. Civ. R. 39-I(c) provides: "When an action is called for trial and a party against whom affirmative relief is sought fails to respond, in person or through counsel, an adversary may where appropriate proceed directly to trial. When an adversary is entitled to a finding in the adversary's favor on the merits, without trial, the adversary may proceed directly to proof of damages."

4. Because Tenant/Petitioner failed to appear at the hearing after receiving proper notice, and Tenant has not shown good cause for his non-appearance, this case will be dismissed with prejudice. *See DOH v. Agape Cabbage Patch/Le Mae Early Child Dev. Ctr.*, 2001 D.C. Off. Adj. Hear. LEXIS 36 at *4 (holding that a failure to appear at a hearing justifies dismissal of the case with prejudice by analogy to D.C. Super. Ct. Civ. R. 41(b)); *Cf. Stitt v. Outten*, TP 22,809 (RHC Aug. 8, 1996) at 11 (holding that hearing examiner should have dismissed with prejudice claims of petitioners who didn't show at hearing); *Shannon & Luchs v. Kinney*, TP 11,086 (RHC May 8, 1984) at 1 (holding that where a party fails to appear at a hearing a motion to dismiss with prejudice should be granted in the absence of good cause); *Wayne Gardens Tenant Ass'n v. H & M Enterprises*, TP 11,845 (RHC Sept. 27, 1985) at 2 (same holding).

5. Under OAH Rule 2818.3, 1 DCMR 2818.3, this order shall not take effect until 14 days after the date on which it is served, and shall be vacated upon the granting of a motion filed by Petitioner within that 14 day period, showing good cause why the case should not be dismissed.

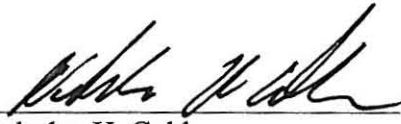
IV. Order

Accordingly, it is, this 5th day of January, 2009:

ORDERED, that this case is **DISMISSED WITH PREJUDICE**; and it is further

ORDERED that this order shall not take effect until 14 days after the date on which it is served, and shall be vacated upon the granting of a motion filed by Petitioner within that 14 day period, showing good cause why the case should not be dismissed; and it is further

ORDERED that the appeal rights of any party aggrieved by this order are set forth below.



Nicholas H. Cobbs
Administrative Law Judge

APPEAL RIGHTS

Pursuant to D.C. Official Code §§ 2-1831.16(b) and 42-3502.16(h), any party aggrieved by a Final Order issued by the Office of Administrative Hearings may appeal the Final Order to the District of Columbia Rental Housing Commission within ten (10) business days, in accordance with the Commission's rule, 14 DCMR 3802. The ten (10) day time limit shall begin to run when the order becomes final. If the Order is served on the parties by mail, an additional five (5) business days shall be allowed, in accordance with 1 DCMR 2811.5.

Additional important information about appeals to the Rental Housing Commission may be found in the Commission's rules, 14 DCMR 3800 et seq., or you may contact the Commission at the following address:

District of Columbia Rental Housing Commission
941 North Capitol Street, N.E.
Suite 9200
Washington, D.C. 20002
(202) 442-8949

Certificate of Service:

**By Priority Mail / Delivery Confirmation
(Postage Paid):**

Larry Kornegay
3533 Ames Street NE, Unit 201
Washington, DC 20019

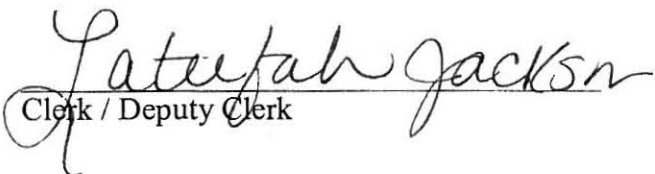
Novo Properties
519 11th Street SE
Washington, DC 20003

By Inter-Agency Mail:

District of Columbia Rental Housing
Commission
941 North Capitol Street, N.E., Suite 9200
Washington, DC 20002

Keith Anderson
Acting Rent Administrator
Rental Accommodations Division
Department of Housing and Community
Development
941 North Capitol Street, N.E., Suite 7100
Washington, D.C. 20002

I hereby certify that on 1-5,
2009, this document was caused to be served
upon the above-named parties at the
addresses and by the means stated.


Clerk / Deputy Clerk