

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

CI 20,780

In re: 3228 Hiatt Place, N.W.

Ward One (1)

HIATT PLACE, L.L.C.
Housing Provider

v.

TENANTS OF 3228 HIATT PLACE, N.W.
Tenants

DECISION AND ORDER

March 24, 2006

YOUNG, COMMISSIONER. This case is before the District of Columbia Rental Housing Commission (Commission) pursuant to the provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001). Pursuant to the Act, D.C. OFFICIAL CODE § 42-3502.16(h) (2001), the Commission initiated review of the Rent Administrator's decision in Hiatt Place, L.L.C. v. Tenants of 3228 Hiatt Place, N.W., CI 20,780 (RHC Apr. 25, 2005). The Act, the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations, 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

I. PROCEDURAL HISTORY

On August 7, 2003, David R. Cormier filed Capital Improvement (CI) Petition 20,780 on behalf of Hiatt Place, L.L.C. for the 22 unit housing accommodation located at 3228 Hiatt Place, N.W. In the petition the housing provider, Hiatt Place, L.L.C., sought

approval to complete the following improvements in the entire housing accommodation:
1) install new windows at a cost of \$65,000.00; 2) install new water meters and water heaters at a cost of \$50,000.00; 3) rebuild the roof at a cost of \$4000.00; 4) rebuild a fence at a cost of \$1000.00; 5) abate lead paint at a cost of \$20,000.00. The total cost of the proposed capital improvements was \$140,000.00, the interest and services charges were \$266,660.00, for a total of \$406,660.00. The housing provider requested a rent ceiling surcharge of \$181.00 per month, per unit, to cover the cost of the capital improvements.

An RACD hearing on the petition was held on October 20, 2003, Hearing Examiner Keith Anderson presided at the hearing. David Cormier appeared and presented evidence and testimony on behalf of Hiatt Place, L.L.C. None of the tenants identified in the record as residents of the housing accommodation appeared at the RACD hearing. On May 21, 2004, Hearing Examiner Anderson issued the RACD decision and order. The hearing examiner concluded as a matter of law:

Petitioner is not entitled to a capital improvement rent ceiling surcharge of \$181 per apartment per month to reimburse Petitioner for the cost of the proposed capital improvements. ... This denial of the rent ceiling surcharge is based [on] the lack of record evidence to establish the completion of a HRA conducted housing inspection of the subject property and to establish that the loan interest amount was calculated according to 14 D.C.M.R. Sect. 4210.19 (1991).

Hiatt Place, L.L.C. v. Tenants of 3228 Hiatt Place, N.W., CI 20,780 (RACD May 21, 2004) at 8-9, Conclusion of Law 1.

On June 9, 2004, David Cormier, on behalf of Hiatt Place, LLC filed a motion for reconsideration of the decision. The housing provider based its motion on its failure to include in the evidence at the hearing a letter dated June 27, 2003 requesting an RACD

inspection of the housing accommodation. The housing provider also requested correction of numerical errors on pages 14 and 15 of the hearing examiner's decision. On June 23, 2004, the hearing examiner issued an order granting the housing provider's motion for reconsideration, and on March 16, 2005, the hearing examiner issued a decision and order granting the capital improvement petition. The hearing examiner concluded that the housing provider was entitled to a rent ceiling surcharge of \$181.00, per unit, per month. He also concluded that the tenants in units 1 (Mrs. Flores), 2 (Mrs. Monan), 3 (Mr. Quintanilla), 21 (Mrs. Eddie), 27 (Mr. Roman), and 32 (Mrs. Nguyen) were entitled to the elderly and/or disabled tenant exemption from the rent ceiling surcharge. See Hiatt Place, L.L.C. v. Tenants of 3228 Hiatt Place, N.W., CI 20,780 (RACD Mar. 16, 2005) at 9.

Pursuant to D.C. OFFICIAL CODE § 42-3502.16(h) (2001) and 14 DCMR § 3808 (2004), on April 25, 2005, the Commission issued notice that it initiated review of the Rent Administrator's decision and order, and held its hearing on November 29, 2005. The Commission raised three (3) issues in its Notice of Commission Initiated Review.

II. THE ISSUES

The Commission raised the following issues in its notice of initiated review:

- A. Whether the capital improvement petition and the hearing notices were delivered to all of the tenants.
- B. Whether the hearing examiner erred by holding a hearing when he did not have record proof that the capital improvement petition and hearing notice were delivered to all of the Tenants.
- C. Whether the decisions and orders issued in CI 20,780 were delivered to all of the Tenants.

III. DISCUSSION OF THE ISSUES

- A. Whether the capital improvement petition and the hearing notices were delivered to all of the tenants.
- B. Whether the hearing examiner erred by holding a hearing when he did not have record proof that the capital improvement petition and hearing notice were delivered to all of the tenants.

The certified record shows that on September 12, 2003, RACD mailed by priority mail with delivery confirmation official notices of the scheduled hearing and a copy of the capital improvement petition to the tenants in units 1 through 7, 21, 23 through 27, and 31 through 37. The notices properly contained the surnames and unit numbers for the tenants residing in the housing accommodation. The certified record contains the delivery confirmation receipts from the United States Postal Service (USPS) for the tenants in units 1 through 7, 21, 23 through 27, and 31 through 37, however, there are no delivery confirmation receipts or any information for the tenants in units B or 22 at the housing accommodation.

The DCAPA, D.C. OFFICIAL CODE § 2-509(a) (2001) provides:

In any contested case, all parties thereto shall be given reasonable notice of the afforded hearing by the Mayor or the agency, as the case may be. The notice shall state the time, place, and issues involved.

The Rental Housing Act, D.C. OFFICIAL CODE § 42-3502.16(c) (2001) provides:

If a hearing is requested timely by either party, notice of the time and place of the hearing shall be furnished the parties by certified mail or other form of service which assures delivery at least 15 days before the commencement of the hearing. The notice shall inform each of the parties of the party's right to retain legal counsel to represent the party at the hearing.

See Joyce v. Dist. of Columbia Rental Hous. Comm'n, 741 A.2d 24 (D.C. 1999) (where the court reversed due to the hearing examiner's failure to follow the Act's requirements

of delivery of the decision by certified mail or other form of service that assures delivery).

In the instant case, RACD had the duty “[u]pon receipt of a petition, ... [to] notify the adverse parties named in the petition of their right to a hearing.” 14 DCMR § 3902.3 (2004). RACD failed to certify to the Commission that it had properly served notice of the hearing on the tenant in unit B, and Mr. or Ms. Peres in rental unit 22. The failure of RACD to certify that the tenants in rental units B and 22 were properly served notice of the hearing on the capital improvement petition, in accordance with the DCAPA and the Act, requires a remand for proper service of the notice of a hearing on those tenants and a hearing on the capital improvement petition solely for the tenants in units B and 22. Therefore, this issue is remanded for proof of delivery of proper notice and hearing for the tenants in units B and 22. No increase in the rent ceiling based on these capital improvements is valid for those units without due process consisting of proof of proper delivery of the hearing notice to the tenants and a hearing. See Ammerman v. Dist. of Columbia Rental Accommodation Comm’n, 375 A.2d 1060 (D.C. 1977).

C. Whether the decisions and orders issued in CI 20,780 were delivered to all of the tenants.

The certified record reflects that on March 16, 2005, RACD mailed by priority mail, with delivery confirmation Hearing Examiner Anderson’s final decision. However, the record reflects that the decision was mailed to the following parties:

David Cormier
1909 – 19th Street, NW [sic] Apt. 709
Washington, D.C. 20009

Tenants of
Apts. B; 1-7; 21-27; 31-37
3228 Hiatt Place, N.W.
Washington, D.C. 20010

Hiatt Place, L.L.C. v. Tenants of 3228 Hiatt Place, N.W., CI 20,780 (RACD Mar. 16, 2005) at 11. The certified record contains USPS Delivery Confirmation receipts which reflect that the decisions were mailed to the parties on March 16, 2005. Mailing labels were affixed to the delivery receipts, the labels were addressed in the following manner:

Tenants of:
3228 Hiatt Place, N.W. #B
Washington, D.C. 20010

The record contains delivery confirmation receipts addressed to each tenant's unit in the housing accommodation in the same manner. The record further reflects that the May 21, 2004 decision and order, Record (R) at 61, and the June 23, 2004 Order on Motion for Reconsideration, R. at 67, were delivered to "Tenants of" the units in the housing accommodation, but not directly to each named tenant.

The applicable regulation governing the agency's service of documents to the parties, 14 DCMR § 3911.1 (2004), provides:

All documents required to be served upon any person under this subtitle shall be served upon that person, or shall be served upon the representative designated by that person or by law to receive service of documents.

The Commission recently addressed a hearing examiner's failure to serve a decision and order to a named tenant in Ashburn, LLC v. Tenants of 1300 Harvard St., N.W., CI 20,783 (RHC Dec. 29, 2005), the Commission stated:

The person who is served must be designated by name, which "consists of one or more Christian or given names and one surname or family name." Gore v. Newsome, 614 A.2d 40, 43 (D.C. 1992) (quoting Black's Law Dictionary 1023 (6th ed. 1990)). ... "[I]n order to satisfy the demands of due process, the notice

need only be designed to notify the person whom the law requires to be notified.”
Dozier v. Dep’t of Employment Serv., 498 A.2d577, 580 (D.C, 1985).

Id. at 7-8.

Because RACD failed to meet the requirements of due process when it mailed the March 16, 2005 decision to the numbered units, rather than the tenants who occupied the units, the Commission vacates the decision and order and remands the decision to the Rent Administrator to reissue the decision and order to the named tenants in the housing accommodation, including the tenants who occupy units B and 22.

IV. CONCLUSION

The Commission reviewed the RACD certified record and determined that the record does not show that the tenants in rental units B and 22 received proper notice of the RACD hearing on the capital improvement petition. Due to agency error in the failure to certify and confirm proper delivery of the hearing notices before the hearing, the Commission remands for record proof of proper delivery of the hearing notices and a hearing on the capital improvement petition for the tenants in units B and 22.

Further, due to the RACD’s failure to meet the requirements of due process when it mailed the March 16, 2005 decision to the numbered units, rather than the tenants who

occupied the units, the Commission vacates the decision and order and remands the decision to the Rent Administrator to reissue the decision and order to the named tenants in the housing accommodation.

SO ORDERED.


RONALD A. YOUNG, COMMISSIONER


JENNIFER M. LONG, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (2004), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk
500 Indiana Avenue, N.W., 6th Floor
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in CI 20,780 was mailed postage prepaid by priority mail, with delivery confirmation on this 24th day of March, 2006 to:

Gary D. Wright, Esquire
8311 Wisconsin Avenue
Bethesda, MD 20814

Mr. or Ms. Doe
3228 Hiatt Place, N.W.
Unit B
Washington, D.C. 20010

Ms. Flores
3228 Hiatt Place, N.W.
Unit 1
Washington, D.C. 20010

Mr. Rogelio
3228 Hiatt Place, N.W.
Unit 2
Washington, D.C. 20010

Ms. Quintanilla
3228 Hiatt Place, N.W.
Unit 3
Washington, D.C. 20010

Ms. Silva
3228 Hiatt Place, N.W.
Unit 4
Washington, D.C. 20010

Mr. Grande
3228 Hiatt Place, N.W.
Unit 5
Washington, D.C. 20010

Mr. Gomez
3228 Hiatt Place, N.W.
Unit 6
Washington, D.C. 20010

Ms. Elizalde

3228 Hiatt Place, N.W.
Unit 7
Washington, D.C. 20010

Ms. Edie
3228 Hiatt Place, N.W.
Unit 21
Washington, D.C. 20010

Mr. or Ms. Peres
3228 Hiatt Place, N.W.
Unit 22
Washington, D.C. 20010

Mr. Canaless
3228 Hiatt Place, N.W.
Unit 23
Washington, D.C. 20010

Ms. Fuentes
3228 Hiatt Place, N.W.
Unit 24
Washington, D.C. 20010

Mr. Diaz
3228 Hiatt Place, N.W.
Unit 25
Washington, D.C. 20010

Ms. Calderon
3228 Hiatt Place, N.W.
Unit 26
Washington, D.C. 20010

Mr. Roman
3228 Hiatt Place, N.W.
Unit 27
Washington, D.C. 20010

Ms. Coceres
3228 Hiatt Place, N.W.
Unit 31
Washington, D.C. 20010

Ms. Nguyen
3228 Hiatt Place, N.W.

Unit 32
Washington, D.C. 20010

Ms. Gomez
3228 Hiatt Place, N.W.
Unit 33
Washington, D.C. 20010

Ms. Sanchez
3228 Hiatt Place, N.W.
Unit 34
Washington, D.C. 20010

Mr. Stewart
3228 Hiatt Place, N.W.
Unit 35
Washington, D.C. 20010

Ms. Velasquez
3228 Hiatt Place, N.W.
Unit 36
Washington, D.C. 20010

Mr. Torres
3228 Hiatt Place, N.W.
Unit 37
Washington, D.C. 20010



LaTonya Miles
Contact Representative
(202) 442-8949