DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 11,761
Consolidated with
TP 11,778, TP 11,788 & TP 11,803

CHRISTOPHER BINDER, Landlord-Appellant

v.

KAREN HAWTHORNE, ET AL., Tenant-Appellees

On Appeal from a Decision and Order of the
Rent Administrator of the District of Columbia

Decided May 14, 1986

DECISION AND ORDER

Creswell, Commissioner: Landlord Christopher Binder has petitioned for review and reversal of a decision and order of the Rent Administrator, dated March 6, 1985, in four consolidated tenant petitions involving rental units which he (Binder) owned. We affirm all aspects of the Rent Administrator's decision and order [1/] except for the imposition of the fine and calculation of interest. We vacate that part of the order imposing a fine as beyond the authority of the Rent

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1. Hawthorne, et al. v. Binder, TPs 11,761, 11,778, 11,788 and 11,803 (RACD, March 6, 1985), reconsideration deemed denied under 14 DCMR §§ 3211.4 and 3211.5.

Administrator. Terl v. Cameron, TP 11,958 (RHC, January 31, 1986), reciting the Commission's position on this issue in Revithes v. D.C. Rental Housing Comm., D.C. Court of Appeals No. 84-1269 (decision pending). And we remand for the proper calculation of interest.

The Rent Administrator found that the four units were last registered in 1979; and that the landlord had not thereafter filed Amended Registration Statements, Certificates of Implementation or other registration forms to support or document subsequent adjustments in the rent ceilings or rents for the subject units up to the date when the tenant petitions were filed. The Rent Administrator also determined that Binder had increased petitioners' rents at various times between May 1982 and November 1984. He held that the rent increases were illegally taken at times when the rental units were not properly registered in violation of §209(a)(1)(B) of the Rental Housing Act of 1980, D.C.Code, 1981 Ed. §45-1519(a)(1)(B). The landlord was ordered to register the subject rental units, to rollback rents for the units to their 1979 levels, to pay treble damages to the tenants for the rent overcharges, and to pay a fine of $5,000.00 for his willful violations of the Act.

In this case, the evidentiary record adequately supports a finding that landlord Binder properly registered the petitioners' rental units in 1979 as required by §205(d) and (e) of the 1977 Act, D.C.Code 1980 Supp. §45-1686(d) and (e). It is not contested that petitioner Pugh's rent was raised in

May 1982, in May 1983, and again in May 1984; that petitioner Hawthorne's rent was raised in September of 1983; that petitioner Harris's rent was raised in March of 1982 and in March of 1984; and that the landlord increased petitioner Awkward's rent in November 1984. It was argued on appeal that all of the 1982 and 1983 rent increases were taken pursuant to rent ceiling adjustments of general applicability (CPI increases) under §207(b) of the Act, D.C.Code 1981 Ed. §45-1517(b); and that the 1984 increases were taken after execution of an agreement by 70% of the tenants consenting to the building-wide increase under §216 of the Act, D.C.Code §45-1526.

The landlord advances two arguments to support these rent increases and ceiling adjustments which were disallowed by the Rent Administrator. First he argues that he filed with the Rent Administrator a Certificate of Implementation (dated November 24, 1982) and an amended registration form (November 11, 1984) to document the 1982 and 1983 CPI adjustments; and an executed 70% Voluntary Rent Increase Agreement (April 27, 1984) for the 1984 increase. These, he contends, justify all rent increases taken. He further contends that it was error for the Rent Administrator to ignore these documents, and that his findings are thus contrary to the evidence in the record.

Next the landlord contends that, even if the above-referenced documents were properly excluded from the record (or in fact were never actually filed), he cannot be penalized for being improperly registered because Certificates of

Implementation of CPI adjustments were not statutorily mandated, and reregistration for CPI adjustments was prohibited by the 1980 Act. Thus, the landlord contends it was at least error for the Rent Administrator to disallow the automatic CPI rent increases taken under §206(b).

A. Registration Filings Support the Rent Increases

Appellant's argument that documents of record support the disallowed rent increases is without merit. When the hearing before the Rent Administrator was held on January 10, 1985 after proper notice to all parties, appellant Binder did not appear in person or by counsel. Instead, the landlord's then counsel wrote a letter, dated January 9, to hearing examiner Carl Bradford (the Rent Administrator's delegee to decide this matter) which explained that because the subject housing accommodation was subject to a foreclosure sale on January 14, Mr. Binder had "elected not to appear and present testimony at the hearing . . . . [but wished] however, to respond to the allegations of the petitions in writing." The letter further stated:

> As I understand it, the basis for the foregoing allegations in the tenants' petitions is the lack of any documentation in the RAO file for the premises. I am enclosing herewith copies of the documents filed by my client with the Rental Accommodations Office, each of which bears the Rental Accomodations Office's stamp. The original of these documents are presently in my possession . . . .
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> We ask that this letter, together with the attachments hereto, be incorporated in your file.

That letter with its enclosures was received by the Rent Administrator's office on January 11, 1985, the day after the

hearing.

At the hearing, the Rent Administrator heard the uncontroverted oral testimony of the tenants as to the instances and amounts of their rent increases. In addition, he took official administrative notice of the Landlord Registration File for the subject property to determine what documents had been filed by the landlord. The evidentiary record closed at the conclusion of the hearing on January 10. Based upon the evidence before him, the Rent Administrator concluded that the subject rental units were properly registered in 1979, but that landlord Binder had failed to comply with registration requirements in all following years. In his decision, the Rent Administrator mentioned receipt of the letter and attachments from the landlord's attorney, but apparently gave them no evidentiary weight. In this there was no error.

The copies of documents submitted by the landlord's attorney were properly excluded from evidence because they were received after the evidentiary record had closed. They were not exhibits made part of the record by the landlord and, most importantly, the tenants never had an opportunity to cross-examine on these documents or challenge their authenticity. It would have been error for the Rent Administrator to consider them as evidence or base any part of his decision on the late-proffered documents. Decisions of the Rent Administrator must be made only on the official record before him. D.C.Code 1981 Ed. §1-1509(c).

The Landlord Registration File is the official file

maintained by the Rent Administrator on each housing accommodation covered by the Act. It should contain the original of every document filed by a landlord for each covered rental unit. For evidentiary purposes we view the Landlord Registration File with a rebuttable presumption that it is maintained in a complete and accurate manner, and is, absent pursuasive rebuttal, the best and substantial evidence of what has and what has not been filed by a housing provider on a particular accommodation. See Waggaman-Brawner Realty Co. v. Horton, TP 4,950, (RHC, July 27, 1983). We are not unmindful of the fact that files may be tampered with (as the landlord has here suggested) and that documents may be inadvertently lost. Thus, our presumption of the accuracy and completeness of the Landlord Registration File is a rebuttable presumption. In this case, we find that the landlord has failed to rebut the presumption of accuracy and completeness by the late-filed documents which he sought to have included in the record.

The Rent Administrator's finding [2/] that the landlord failed to file registration documents after 1979 is supported

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2. This present case is distinguishable from Baptist Home of the District of Columbia v. D.C. Rental Housing Comm., D.C. App. No 85-6 (October 24, 1985) where the Court reversed the Commission's affirmance of a finding of improper registration based on the landlord's failure to file a Certificate of Implementation. There the Court held that the evidence did not support the finding that the landlord had not filed the required Certificate. The Court in Baptist Home implicitly recognized the legality of the Certificate even though the Commission's authority to require such was not under review.

by the only substantial evidence in the record on this issue, i.e., the Landlord Registration File, and the letter of the landlord's attorney with its attachments was not even evidence to be considered, much less to support a reversal.

B. The Requirement of Certificates of Implementation

The landlord argues that he cannot be found in violation of the 1980 Act's registration requirements for failing to file Certificates of Implementation for the 1982 and 1983 CPI adjustments of general applicability because the Certificates are not required by the Act. While this argument raises interesting issues, we are of the opinion that this appellant cannot raise it on appeal in this case for two reasons:

First, the landlord's argument is premised on the assertion that the rent increases taken during 1982 and 1983 were authorized by CPI ceiling adjustments of general applicability pursuant to §207(b) of the Act. Even if we accept arguendo that the filing of a Certificate of Implementation is not required to support a CPI rent increase under §207(b), the landlord offered no admissible evidence before the Rent Administrator to substantiate a finding that the rent increases in question were in fact based on §207(b). [3/] While we do not question the integrity of the appellant's attorney, we cannot accept as fact his assertion, first made on appeal,

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3. We note, too, that the percent of rent increases taken by appellant in 1982 and 1983 in each case exceed the applicable certified percentage of increase in the CPI.

that the rent increases in question were based on CPI adjustments.

The landlord is in effect trying to argue that it was error for the Rent Administrator to fail to find that the 1982 and 1983 rent increases were based on CPI adjustments, and were thus free of registration requirements. This landlord--because he placed nothing in the Landlord Registration File to show that the rent increases were based on CPI adjustments, because he increased rents in amounts which exceeded the certified increase in the CPI, and because he introduced no evidence at the hearing to support his claim to CPI increases--is in no position to make that argument. We find no error by the Rent Administrator in not considering either evidence or a legal argument that was not presented before him in the contested case hearing.

A related bar to our consideration of the landlord's argument is the general principle that an appellant cannot raise for the first time on appeal an issue not initially raised before the Rent Administrator. This principle has been held to apply to affirmative defenses first raised by a landlord on appeal, Alaniz v. Sadler, TP 10,516 (RHC, October 7, 1983); to additional tenant complaints first raised on appeal of a tenant petition, Moore v. H.G. Smithy Co., TP 4,493 (RHC, September 9, 1982); and to tenant counterclaims raised in bar of a hardship petition, Durani v. Wood, HP 10,234 (RHC, April 21, 1983).

The Commission cannot make a finding of fact essen-

tial to appellant's argument, Meier v. D.C. Rental Accommodations Comm., 411 A.2d 612 (D.C.App. 1980), and cannot entertain an argument raised for the first time on appeal which is premised on facts not supported by substantial evidence (in this case, by any evidence) in the record before the Rent Administrator.

C. Treble Damages and Interest

The landlord makes two other arguments. We find the first to be without merit. The landlord urges that treble damages are not warranted in view of the evidence of mitigating circumstances in the record. Having disposed of the admissibility of the landlord's evidence of mitigating circumstances--the documents which the landlord proffered after the hearing--we find no error in the Rent Administrator's determination to impose treble damages.

The landlord also challenges the imposition of interest on the monetary damages awarded the petitioners. His dual challenge to the interest award argues first that there is no authority to award any interest, and second that interest, if awarded, should be given only on single damages. We reject the first contention, agree with the second, and remand the case for calculation of interest under the guidelines set forth in Hinton v. Moser, et al., TP 2,774 (RHC, April 2, 1986).

Upon review, that portion of the decision and order of the Rent Administrator imposing a fine upon the landlord-appellant is vacated. The decision and order appealled from

is reversed as to the computation of interest and remanded for a recalculation of interest under Hinton, supra. The decision in all other aspects is affirmed.

It is so ordered by the Commission this 14th day of May, 1986.

Belva D. Newsome, Chairperson

Daniel B. Jordan, Commissioner

Isaiah T. Creswell, Jr., Commissioner

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CERTIFICATE OF SERVICE

I hereby certify that a foregoing copy of this document was mailed to the parties above at the addresses given, on this 15th day of May, 1986. V. Stephenson