

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 24,597

JOHN EVANS

Tenant

v.

424 Q STREET LIMITED PARTNERSHIP/

T.K. CHAMBERLAIN

Housing Provider

ORDER ON MOTION TO SUPPLIMENT THE RECORD

March 29, 2002

YOUNG, COMMISSIONER. On February 25, 2002, Theodore Chamberlain, a general partner of the housing provider, 424 Q Street Limited Partnership, filed a motion with the Commission. The motion stated in part:

[P]laintiff moves for leave to file out-of-time papers that will show that plaintiff's property was registered with the DC Government [sic]. 1) a memo of 4/13/00 [sic] by plaintiff to the DC BZ [sic] Appeals; 2) a letter of 9/18/99 [sic] by plaintiff to the DC BZ [sic] Appeals applying for a variance; 3) a letter to plaintiff of 1/21/99 [sic] by Ms. Gladys Hicks, Zoning Consultant; and 4) a copy of the Certificate of Occupancy #79515 for 424 Q Street, NW, DC [sic]

These papers appear to show that this property was registered in DC [sic] prior to 5/12/58, [sic] that said C of O was "Grand-Fathered" and that plaintiff made bona fide attempts to update that registration, which resulted, eventually, in unearthing the existing C of O.

THE PROCEDURES

John Evans, tenant/appellee, who occupied unit 1 of the housing accommodation at 424 Q Street, N.W., filed Tenant Petition (TP) 24,597 with the Rental Accommodations and Conversion Division (RACD) on October 16, 1998. In the petition the tenant asserted that the housing provider, 424 Q Street Limited Partnership: 1) charged a rent which exceeded the legally calculated rent ceiling; 2) failed to properly

register the seven (7) unit housing accommodation with RACD; and 3) substantially reduced services and facilities provided in connection with the rental unit.

On January 25, 1999, Hearing Examiner Gerald Roper presided at the Office of Adjudication (OAD) hearing. The tenant appeared with counsel. Theodore Chamberlain, one of the general partners, appeared on behalf of the housing provider, 424 Q Street Limited Partnership. On November 26, 1999, the hearing examiner issued the OAD decision and order. The hearing examiner found in favor of the tenant, sustaining the assertions made in the tenant petition and concluded that the tenant was entitled to a rent roll back, a rent refund, plus interest, and trebled refund. See Evans v. 424 Q Street Ltd. Partnership, TP 24,597 (OAD Nov. 26, 1999) at 16.

On December 15, 2000 the housing provider filed a notice of appeal with the Commission. The Commission held the hearing on appeal on April 6, 2000. The Commission's decision and order in 424 Q St. Ltd. P'ship/T.K. Chamberlain v. Evans, TP 24,597 (RHC July 31, 2000), was issued on July 31, 2000. The Commission decision affirmed the hearing examiner's decision in part, reversed the decision in part, and remanded the decision for a determination of the rent ceiling and a proper calculation of the rent refund. Additionally, the Commission reversed the hearing examiner's failure to impose a fine for the registration violations, and the Commission fined the housing provider \$5000.00.

In Evans v. 424 Q St. Ltd. P'ship, TP 24,597 (OAD Oct. 11, 2001), the hearing examiner dismissed TP 24,597 with prejudice. The dismissal was based on a settlement agreement reached by the parties in the landlord-tenant branch of the Superior Court of the District of Columbia. In Evans v. 424 Q St. Ltd. P'ship/T.K. Chamberlain, TP 24,597

(RHC Nov. 16, 2001), the Commission initiated review of the OAD order pursuant to D.C. OFFICIAL CODE § 42-3502.16 and 14 DCMR § 3808. On January 8, 2002 the Commission held a hearing on its initiated review of the October 11, 2001 OAD order.

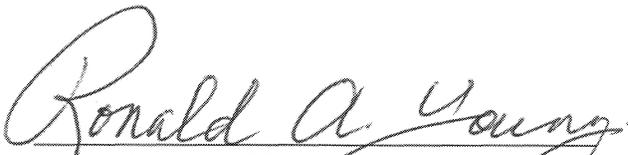
THE LAW

The Commission's function, as an appellate body, is to review the record, as it existed before the hearing examiner at the OAD hearing. D.C. OFFICIAL CODE § 42-3502.16(h). Meir v. District of Columbia Rental Hous. Comm'n, 372 A.2d 566 (D.C. 1977). Documents admitted for the first time on appeal, are considered to be "new evidence," which the Commission is forbidden to consider. 14 DCMR § 3807.5; Davis v. Barac Co., TP 24,835 (RHC Sept. 28, 2000). Finally, evidence, including testimony, may not be admitted after the hearing is finished. Harris v. District of Columbia Rental Hous. Comm'n, 505 A.2d 66 (D.C. 1986).

The Commission notes that the evidence of record of the OAD proceeding does not reflect that the housing provider offered into evidence the documents which it has proffered to the Commission for supplementation of the record. Nor does the record reflect that the hearing examiner accepted into evidence copies of the documents proffered to the Commission by the housing provider. Therefore, there was no proof that the hearing examiner admitted these documents into the record evidence.

Accordingly, the housing provider's motion to supplement the record with documents not presented at the OAD hearing is denied.

SO ORDERED.


RONALD A. YOUNG, COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER ON MOTION TO SUPPLIMENT THE RECORD** in TP 24,597 was mailed by priority mail with delivery confirmation this **29th day of March, 2002** to:

Theodore K. Chamberlain
c/o 424 Q Street Limited Partnership
1852 East-West Highway
Silver Spring, MD 20910

Thomas Beimers, Esquire
Neighborhood Legal Services Program
701 4th Street, N.W.
Third Floor
Washington, D.C. 20001


LaTonya Miles
Contact Representative