

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 25,077

In re: 130 Bryant Street, N.W., Unit 1

Ward Five (5)

NICOLA BASTIN

Tenant

v.

DANIEL I. FIVEL, ET AL.¹

Housing Providers

DECISION AND ORDER

July 20, 2004

PER CURIAM. This matter is before the District of Columbia Rental Housing Commission (Commission) pursuant to the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001). 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 (1991) also govern the proceedings. In accordance with D.C. OFFICIAL CODE § 42-3502.16(h) (2001), the Commission initiated review of the Rent Administrator's decision.

I. PROCEDURAL BACKGROUND

Nicola Bastin filed Tenant Petition (TP) 25,077 with the Rental Accommodations and Conversion Division (RACD) on September 11, 2000. In the petition, the tenant alleged that the housing provider violated the provisions of the Act when the housing provider did the following: 1) imposed a rent increase that was larger than the amount of

¹ Other parties were not listed in the Decision & Order of the hearing examiner. See Bastin v. Fivel, TP 25, 077 (RACD July 23, 2002) at 1.

increase allowed by any provision of the Act; 2) failed to file the proper rent increase forms with the RACD; 3) charged a rent that exceeded the legally calculated rent ceiling; 4) filed improper rent ceilings with the RACD; 5) increased the rent when the unit was not in substantial compliance with the housing regulations; 6) failed to properly register the housing accommodation with the RACD; 7) substantially reduced services and facilities; and 8) violated section 4216 of the Act.

The hearing examiner, Gerald J. Roper, convened the hearing on November 19, 2001 after a series of continuances for cause by both parties. The tenant appeared pro se and the housing provider appeared with counsel, Morris Battino. On July 23, 2002, the hearing examiner issued a decision ordering the housing provider to pay a rent refund in the amount of six thousand four hundred and thirteen dollars (\$6413.00).

On August 22, 2002, the Commission initiated review of the hearing examiner's decision pursuant to D.C. OFFICIAL CODE § 42-3502.16(h) (2001)² and 14 DCMR § 3808 (1991).³ In accordance with 14 DCMR § 3808.2 (1991), the Commission notified the parties of its reason for initiating review and informed the parties of their right to present

² “[T]he Rental Housing Commission may review a decision and order of the Rent Administrator on its own initiative.” D.C. OFFICIAL CODE § 42-3502.16(h) (2001).

³ The regulation, 14 DCMR § 3808 (1991), provides:

- 3808.1 Not later than twenty (20) days after the deadline for the parties to file an appeal, the Commission may initiate a review of any decision of the Rent Administrator.
- 3808.2 The Commission shall serve the parties who appeared before the hearing examiner with its reasons for initiating a review and shall inform them of their right and opportunity to present arguments on the issues identified by the Commission.
- 3808.3 All due process rights afforded parties in a review commenced by a notice of appeal shall also be provided when the review is initiated by the Commission.
- 3808.4 In appeals initiated pursuant to this section, the provisions of §§ 3802.10, 3802.11 and 3805.5 shall not apply.

arguments on the issue identified by the Commission. The Commission scheduled the hearing on its initiated review for April 24, 2003.

II. ISSUE ON APPEAL

The Commission identified the following issue as the basis of review:

Whether the hearing examiner erred when he calculated the interest on the rent refund by using the total number of months the housing provider held the rent overcharges, rather than a separate calculation for each time period.

Notice of Commission Initiated Review (RHC Aug. 22, 2002) at 2.

III. DISCUSSION OF THE CASE

Whether the hearing examiner erred when he calculated the interest on the rent refund by using the total number of months the housing provider held the rent overcharges, rather than a separate calculation for each time period.

Simple interest is correctly calculated by the formula $I = PRT$ meaning interest is the principal multiplied by the rate multiplied by the time.⁴ See Johnson v. Gray, TP 21,400 (RHC Aug. 1, 1994) at 8; Reese v. Bankhead, TP 22,186 (RHC June 1, 1994) as examples of descending monthly interest calculations. In this appeal it means multiplying the rent overcharge for each month (principal), by the number of months the housing provider held each rent overcharge (time), by the judgment interest rate used by the Superior Court of the District of Columbia on the date that the hearing examiner issued the decision and order (rate), 14 DCMR § 3826.3 (1998).⁵ In the current appeal, the hearing examiner committed error by using the total amount of all months of the rent

⁴ The Commission's rules require simple interest, not compound interest. See 14 DCMR § 3826.1; 45 D.C. Reg. 686 (Feb. 6, 1998).

⁵ The hearing examiner is cautioned not to change or vary the interest rate as was done in interest calculations before the Commission amended the interest rules in 1998. See 14 DCMR § 3826.3; 45 D.C. Reg. 686 (Feb. 6, 1998).

overcharge as the principal, rather than calculating the interest for each month's rent overcharge. See Johnson at 10, see also chart attached to Reese decision.

The Commission, based on the incorrect calculation of interest, reverses the interest calculation, and remands this case to the hearing examiner to calculate interest on the rent refunds in the manner demonstrated in the Johnson and Reese cases. The hearing examiner is directed to make a separate interest calculation for each month (time) the rent overcharge (principal) was held by the housing provider. See Noori v. Whitten, (TP 27,045 (RHC Sept. 13, 2002) (where the Commission remanded an appeal due to the failure of the hearing examiner to calculate interest for each month the rent refund was held).

The Commission took official notice of the record of the Judgment Office of the Superior Court of the District of Columbia.⁶ The record showed four percent (4%) was the interest rate on the date of the hearing examiner's decision, not six percent (6%) used by the hearing examiner. See decision at 5. The rules require the hearing examiner to use the interest rate in effect on the date of the decision. 14 DCMR § 3826.3 (1998). The Commission directs the hearing examiner to correct this plain error, 14 DCMR § 3807.4 (1991), in the interest calculations in the remand decision. Cf. Hill v. District of Columbia Dept. of Employment Servs., 717 A.2d 909 (D.C. 1998) (where the court remanded for interest calculations due to new issues raised on appeal.) In the instant appeal, the new issue was the correct interest rate, as well as, the issue in the

⁶ "Where the decision of the Mayor or any agency in a contested case rests on official notice of a material fact not appearing in the evidence in the record, any party to such case shall on timely request be afforded an opportunity to show the contrary." D.C. OFFICIAL CODE § 2-509 (2001). Accordingly, the parties have ten (10) days to show the contrary to the corrected interest rate of four percent (4%) stated by the Commission.

Commission's notice of initiated review about interest calculation for each month (time) the rent overcharge was held by the housing provider.

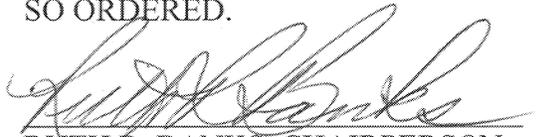
Pursuant to 14 DCMR § 3807.4 (1991), "Review by the Commission shall be limited to the issues raised in the notice of appeal; Provided that the Commission may correct plain error." In addition, the Act gives the Commission power to "review a decision of the Rent Administrator on its own initiative." D.C. OFFICIAL CODE § 42-3502.16(h) (2001). During the Commission's initiated review, it noted that the hearing examiner wrote, "Petitioner is entitled to a refund of \$100 per month for thirty-four (33) months." Decision at 5. This conflict between the written words, "thirty-four" and the numbers "33" require remand. See Alexander Corp. v. Armstead, TP 24,777 (RHC Aug. 15, 2000) at 9 (where the Commission remanded due to the conflict between the finding of fact and order, because the finding of fact stated a fine of \$75.00 but ordered a fine of \$750.00). In the instant review by the Commission, the number of months (time) affects the amount of interest, which is the issue raised by the Commission in its initiated review, because interest, in part, is based on time (months in this case). Similarly, the hearing examiner committed plain error twice in the interest calculation in the statements related to the "Duration of the Overcharge: October 1998 through August 2000 (33 months)" and "Duration of the Overcharge: September 2000 through July 2002 (11) months" because the written words do not agree with the number of months. Decision at 6. These conflicting statements affect the time factor in the interest calculation.

IV. CONCLUSION

The Commission directs the hearing examiner on remand to correct the hearing examiner's error of using an improper method to calculate the interest due on the rent

refund. The Commission corrects the hearing examiner's plain error of using the incorrect judgment interest rate, and directs the hearing examiner to use the correct judgment interest rate in the interest calculations on remand. Finally, the Commission noted conflicts between the written word and numbers in the interest calculations in the decision. Id.

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON


RONALD A. YOUNG, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (1991), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (1991), 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's Rule, D.C. App. R. 15(a), provides in part: "Review of orders and decisions of an agency shall be obtained by filing with the clerk of this court a petition for review within thirty days after notice is given, in conformance with the rules or regulations of the agency, of the order or decision sought to be reviewed ... and by tendering the prescribed docketing fee to the clerk." 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

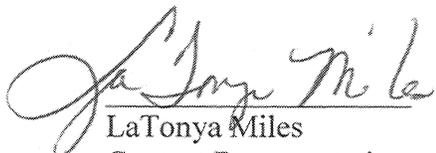
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Decision and Order in TP 25,077 was mailed by priority mail with delivery confirmation, postage prepaid, this **20th day of July 2004** to:

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