

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 26,195

In re: 1530 Rhode Island Avenue, N.E., Unit 504

Ward Five (5)

CLARA REAVES
Housing Provider/Appellant/Cross Appellee

v.

WILLIE BYRD
Tenant/Appellee/Cross Appellant

DECISION AND ORDER

July 24, 2002

PER CURIAM. This case is a cross appeal from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Office of Adjudication (OAD), to the Rental Housing Commission (Commission), pursuant to the Rental Housing Act of 1985 (Act), D.C. Law 6-10, OFFICIAL CODE §§ 42-3501.01-3509.07 (2001). 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 (1991) govern these proceedings.

I. PROCEDURAL HISTORY

The housing accommodation, located at 1530 Rhode Island Avenue, N.E., is an apartment building managed by the housing provider, Clara Reaves. On January 11, 2001, the tenant, Willie Byrd, filed Tenant Petition (TP) 26,195 with the Rental Accommodations and Conversion Division (RACD). In his petition, the tenant asserted: The rent increase on his unit was improper, because it was larger than the amount of increase allowed by any applicable

provision of the Act; the rent increase was taken while his unit was not in substantial compliance with the District's Housing Regulations; and the services and facilities provided in connection with his rental unit were substantially reduced by the housing provider, in violation of section 211 of the Act. See Tenant Petition at 3-6.

An OAD administrative hearing on the matter was scheduled for May 7, 2001. Although the tenant was present for the hearing, the housing provider did not appear. Ms. Reaves contacted the OAD and requested that the hearing be rescheduled. See Record (R.) at 15. The hearing examiner granted the housing provider's request, rescheduled the hearing for October 15, 2001, and the OAD mailed the hearing notice to each party at their respective addresses set forth in the petition.¹

On October 15, 2001, Hearing Examiner James C. Harmon presided over the OAD hearing on the matter. The tenant appeared pro se, however, the housing provider was neither present nor represented by counsel. The hearing examiner conducted the hearing in Ms. Reaves' absence, and considered the evidence and testimony presented by the tenant. On January 2, 2002, Thomas Hope, an owner of the subject property, made a written request for a new hearing. In his letter to the OAD, Mr. Hope argued that neither the owners nor the manager of the subject property received notice of the October 15, 2001 OAD hearing.

On January 14, 2002, the hearing examiner issued a decision and order in this case. As a preliminary matter, the hearing examiner denied Mr. Hope's motion for a new hearing on the grounds that: (1) The motion was defective because it failed to have a certificate of service

¹ The record reflects delivery confirmation of the Rescheduled Notice of Hearing by the United States Postal Service. Priority mail was delivered to the tenant on September 1, 2001 at 12:22 p.m., confirmation number 03001290000092055198; priority mail was delivered to 1511 Rhode Island Avenue, N.E., Washington D.C. 20018 on September 4, 2001 at 12:45 p.m., confirmation number 03001290000092055181.

indicating Mr. Hope served the motion on the tenant; (2) the motion had not been filed by a party to the action, because Clara Reaves was the only housing provider named in TP 26,195; and (3) the housing provider received notice of the May 7, 2001 hearing, after which she did not inform the OAD that the address where notice of the hearing was sent, 1511 Rhode Island Avenue, N.E., Washington, D.C. 20018, was incorrect. See Byrd v. Reaves, TP 26,195 (OAD Jan. 14, 2002) at 2.

The hearing examiner made the following pertinent findings of fact: The housing provider increased the tenant's rent from \$445.00 to \$575.00 as of January 1, 2001; the housing provider violated the District's Housing Code because the tenant's unit lacked hot water from November 1, 2000 to the date of hearing, October 15, 2001; the housing provider violated the District's Housing Code because the tenant's unit had chipped paint from January 1, 2001 to the date of hearing, October 15, 2001; the tenant's unit lacked heat from January 2001 to the spring of 2001; the front entrance door of the housing accommodation did not have a lock; and the elevator at the housing accommodation was unsafe because the elevator doors closed on persons as they attempted to enter the elevator. Id. at 4-5.

The hearing examiner also found that on or around February 14, 2001, after the tenant filed his petition, the tenant informed the housing provider that there was a lack of heat and hot water in the tenant's apartment;² in February 2001, the tenant informed the housing provider about the chipped paint on the living room, bedroom, and kitchen walls; the tenant did not inform the housing provider that the entrance door did not have a lock; and the tenant did not

² The Commission held that there cannot be a finding of a reduction in services and facilities, if the tenant did not provide the housing provider with notice of conditions alleged to be reductions in services. See Gelman Co. v. Jolly, TP 21,451 (RHC Oct. 25, 1990) at 5. See also William Calomiris Inv. Corp. v. Milam, TP's 20,144; 20,160, & 20,248 (RHC Apr. 26, 1989) at 10 (where the Commission held that a housing provider must have been put on notice of the conditions existing within a tenant's rental unit which are alleged to be reductions in services or facilities).

inform the housing provider of the unsafe elevator door that closed on its occupants. See Byrd v. Reaves, TP 26,195 (OAD Jan. 14, 2002) at 2.

The hearing examiner made the following conclusions of law: (1) The housing provider unlawfully increased the tenant's rent on January 1, 2001, to an amount that was higher than allowed by any applicable provision of the Act; (2) the tenant failed to prove that the housing provider improperly increased the tenant's rent while the rental unit was not in substantial compliance with the District's Housing Regulations, because the tenant failed to provide notice of housing code violations to the housing provider; and (3) the tenant failed to prove the housing provider substantially reduced the services and/or facilities in connection with his rental unit, because the tenant failed to provide notice of the reduced services and/or facilities to the housing provider. Id. at 7-10.

The hearing examiner ordered a rent roll back to \$445.00 to January 1, 2001 against the housing provider, and further ordered the housing provider to pay a \$1000.00 fine for her willful violation of the Act.

The tenant filed a Motion for Reconsideration in the OAD on January 29, 2002, in response to the hearing examiner's decision and order. The hearing examiner informed the tenant that the OAD no longer had jurisdiction over the matter,³ advised the tenant that the matter was on appeal in the Commission, and notified the tenant that he may file an appeal to the Commission no later than January 31, 2002. See Byrd v. Reaves, TP 26,195

³ The hearing examiner committed plain error when he advised the tenant that the OAD no longer had jurisdiction over the instant case because the matter was on appeal in the Commission. The regulation, 14 DCMR § 3802.3 (1991), provides:

The filing of a notice of appeal removes jurisdiction over the matter from the Rent Administrator; Provided, that if both a timely motion for reconsideration and a timely notice of appeal are filed with respect to the same decision, the Rent Administrator shall retain jurisdiction over the matter solely for the purpose of deciding the motion for reconsideration, and the Commission's jurisdiction with respect to the notice of appeal shall take effect at the end of the ten (10) day period provided by §4014.

(OAD Jan. 29, 2002).

II. ISSUES ON APPEAL

The housing provider filed a timely Notice of Appeal in the Commission on January 15, 2002. The housing provider raises two issues on appeal: (1) The housing provider alleges she did not receive official notice of the October 15, 2001 OAD hearing; and (2) the housing provider asserts the hearing examiner erred when he concluded that the housing provider violated the Act by unlawfully increasing the tenant's rent. Housing Provider's Notice of Appeal at 1.

On January 30, 2002, the tenant filed a Notice of Appeal as a cross appeal, in which he asserted "Clara Reaves was aware of all violations noted." Tenant's Notice of Appeal at 1. The tenant's timely Notice of Appeal also contained the following statements:

- A) Page 7 [sic] 14 DCMR sec [sic] 606.2 refer to Page 5 No.6 (A&B) No.7 No. 8, No.9, No. 10 & 11.
- B) Page 8 Rule 14 DCMR sec. [sic] 4211.6 refer [sic] page 5(6) A&B No. 8.
- C) Page 10 Conclusion of Law No. 2 [sic] D.C. Code Section 45-2518(A)(1)(A).

Id.

III. DISCUSSION OF THE ISSUES

A. Housing Provider's Appeal

Whether the OAD denied the housing provider proper service of notice for the October 15, 2001 hearing.

On appeal, the housing provider argues she did not receive OAD's Rescheduled Notice of Hearing for October 15, 2001. At the appellate hearing before the Commission, the housing provider stated the address of the housing accommodation is 1511 Franklin Street, N.E., Washington D.C. 20018, not 1511 Rhode Island Avenue, N.E., Washington, D.C. 20018.

Byrd v. Reaves, TP 26,195 (RHC May 23, 2002) (Audio Recording). The housing provider argues OAD's Rescheduled Notice of Hearing was sent to an incorrect address, 1511 Rhode Island Avenue, N.E., and the housing provider also alleges she was denied proper service from OAD.

The Act, D.C. OFFICIAL CODE § 42-3509.04(a)(3) (2001), provides service shall be made upon a party or their representative by mail or deposit with the United States Postal Service, and the parcel must be properly stamped and addressed.⁴ When the tenant filed TP 26,195, he stated the housing provider's address was "1511 Rhode Island Ave [sic], N.E. Wash [sic], D.C., 20018." Tenant Petition at 2. Based on this information from the tenant's petition, OAD mailed the Rescheduled Notice of Hearing to the housing provider at 1511 Rhode Island Avenue, N.E., Washington, D.C. 20018. (R. at 16). In order to determine the housing provider's correct address, the Commission took official notice of the housing provider's Amended Registration Form filed with RACD.⁵ Upon review of the Amended Registration Form, the Commission determined that 1511 Franklin Street, N.E., Washington, D.C. 20018 is the official registered

⁴D.C. CODE § 42-3509.04 provides in relevant part:

- (a) Unless otherwise provided by Rental Housing Commission regulations, any information or document required to be served upon any person shall be served upon that person, or the representative designated by that person or by the law to receive service of documents. When a party has appeared through a representative of record, service shall be made upon that representative. Service upon a person may be completed by any of the following ways:

...

- (3) By mail or deposit with the United States Postal Service properly stamped and addressed...

⁵The Commission took official notice of the Amended Registration Form, which the housing provider filed with RACD on August 31, 2001. The Commission takes this action pursuant to the DCAPA, D.C. OFFICIAL CODE § 2-509(b), which provides that where the decision of an agency in a contested case rests upon official notice of a material fact not appearing in the evidence in the record, any party to such a case, upon timely request, shall be afforded an opportunity to show the contrary. In accordance with D.C. OFFICIAL CODE § 2-509(b), the parties have fifteen (15) days from the date of this decision to show facts contrary to those found in the Amended Registration Form. See Carey v. District Unemployment Compensation Bd., 304 A.2d 18, 20 (D.C. 1973).

address of record submitted by the housing provider. There is nothing in the record to indicate the Rescheduled Notice of Hearing was mailed to the housing provider's correct address stated in the official RACD record. Because OAD failed to properly address the housing provider's Rescheduled Notice of Hearing, OAD denied the housing provider proper service of notice required by the Act. See D.C. OFFICIAL CODE § 42-3509.04(a)(3) (2001).

The housing provider was denied "due process of law," which is defined as "[a]n orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case."⁶ Furthermore, the requirements of procedural due process under the United States Constitution "are met only if a party was given adequate opportunity to prepare and present its position to the agency involved." Ammerman v. District of Columbia Rental Accommodations Comm'n, 375 A.2d 1060, 1062 (D.C. 1977) (citing Watergate Improvement Assoc. v. Public Serv. Comm'n, 326 A.2d 778, 786 (D.C. 1974)). As a consequence of OAD's defective service to the housing provider, she was denied an opportunity to be heard and her due process rights under 14 DCMR § 3911.1 (1991) were violated.⁷

Moreover, the hearing examiner erred when he imposed sanctions against the housing provider. "An administrative agency's power to impose sanctions extends only to those parties who have been afforded the required procedural guarantees with respect to the agency's proceedings." Ammerman, 375 A.2d at 1062. It is well established that service is a procedural guarantee under the Act. See D.C. OFFICIAL CODE § 42-3509.04(a)(3) (2001). Because the

⁶ BLACK'S LAW DICTIONARY 449 (5th ed. 1979).

⁷ The regulation, 14 DCMR § 3911.1 (1991), 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."

housing provider was not afforded the required procedural guarantees regarding OAD's proceedings, the hearing examiner erred when he ordered a rent rollback to January 1, 2001 against the housing provider, and subjected the housing provider to a fine of \$1000.00. Byrd v. Reaves, TP 26,195 (OAD Jan. 14, 2002) at 10-11.

In Radwan v. District of Columbia Rental Hous. Comm'n, 638 A.2d 478, 481 (D.C. 1996), the District of Columbia Court of Appeals identified four (4) factors that the Commission must consider in determining whether to set aside a default judgment. The Radwan factors are:

- (1) Whether the movant had actual notice of the proceeding;
- (2) Whether he acted in good faith;
- (3) Whether the moving party acted promptly; and
- (4) Whether a *prima facie* adequate defense was presented. Against these factors, prejudice to the non-moving party must be considered.

Id. The Commission's review of the first Radwan factor revealed the housing provider did not receive notice of the OAD proceeding scheduled for October 15, 2001, due to OAD's improper service to the housing provider. Without proper notice of the OAD hearing, the housing provider was denied due process as discussed above. See Brown v. Samuels, TP 22,587 (RHC Sept. 17, 1997).

IV. CONCLUSION

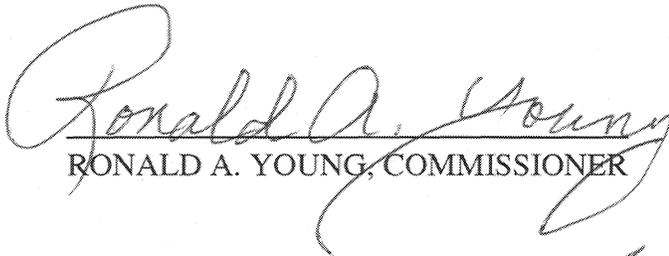
The substantial evidence in the record revealed the tenant provided a defective address for the housing provider in his petition. This action by the tenant prevented the housing provider from receiving proper notice of the rescheduled OAD hearing for October 15, 2001. Because the record is devoid of proof that the Rescheduled Notice of Hearing was served on the housing provider at her official address of record, the additional issues raised on appeal by the

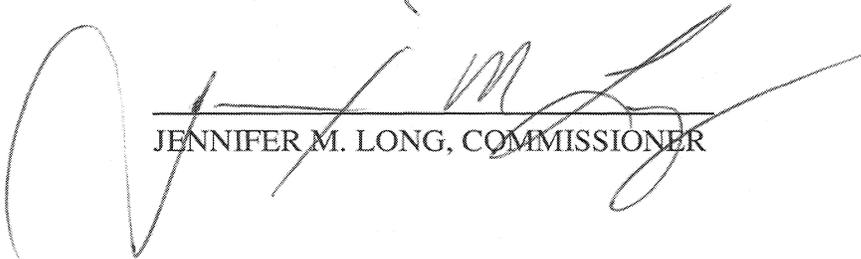
housing provider and the tenant are moot.⁸

Accordingly, the decision of the hearing examiner is reversed and this case is remanded for a hearing de novo. The additional issues raised on appeal are denied as moot.

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON


RONALD A. YOUNG, COMMISSIONER


JENNIFER M. LONG, COMMISSIONER

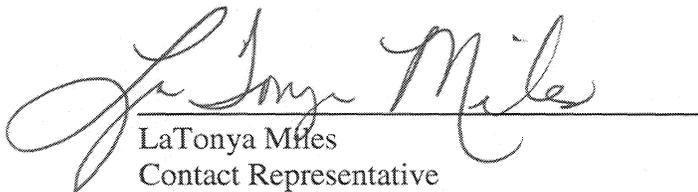
⁸ Because this is a remand, review by the Commission of any future final decision from OAD will require the filing of a new notice of appeal. See Bell v. United States, 676 A.2d 37, 41 (D.C. 1996) (cited in Majerle Mgmt., Inc. v. District of Columbia Rental Hous. Comm'n, 777 A.2d 785, 785 (D.C. 2001).

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing DECISION AND ORDER in TP 26,195 was mailed by priority mail, with delivery confirmation, postage prepaid, this **24th day of July, 2002** to:

Willie Byrd
1530 Rhode Island Avenue, N.E.
Apartment 504
Washington, D.C. 20018

Clara Reaves
Thomas Hope
1511 Franklin Street, N.E.
Washington, D.C. 20018


LaTonya Miles
Contact Representative