

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,006

In re: 2914 11th Street, N.W., Unit 5

Ward One (1)

NICOLA ELLIOTT
Tenant

v.

DERICK NOEL –
H& D Enterprises
Housing Provider

DECISION AND ORDER

February 28, 2003

LONG, COMMISSIONER. This case is before the District of Columbia Rental Housing Commission (Commission) pursuant to the Rental Housing Act of 1985 (Act), D.C. 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 the proceedings. In accordance with § 42-3502.16(h), the Commission initiated review of the Rent Administrator's decision that Hearing Examiner Henry McCoy issued on July 15, 2002.

I. PROCEDURAL HISTORY

The tenant, Nicola Elliott, filed Tenant Petition (TP) 27,006 with the Rental Accommodations and Conversion Division (RACD) on January 25, 2001. In the petition, she alleged that the housing provider, Derick Noel, substantially reduced and

permanently eliminated services and facilities; directed retaliatory action against her; and served an improper notice to vacate.

Hearing Examiner McCoy held the evidentiary hearing on May 14, 2001. The tenant and the housing provider appeared pro se. Following the hearing, the hearing examiner issued the decision and order and rendered the following conclusions of law:

1. Respondent substantially reduced Petitioner's repair service by failing to make requested repairs without proportionally reducing Petitioner's rent, in violation of 14 DCMR [§] 4211.6 [1991].
2. Respondent is liable for treble damages pursuant to D.C. [OFFICIAL] CODE § 42-3509.01(a) [2001].
3. Respondent did not retaliate against Petitioner in violation of D.C. [OFFICIAL] CODE § 42-3505.02 [2001].
4. The Notice to Vacate for Personal Use served on Petitioner did not violate D.C. [OFFICIAL] CODE § 42-3505.01(d) [2001].

Elliott v. Noel, TP 27,006 (OAD July 15, 2002) at 14.

On August 21, 2002, the Commission initiated review of the hearing examiner's decision and order pursuant to D.C. OFFICIAL CODE § 42-3502.16(h) (2001) and 14 DCMR § 3808 (1991).¹ In accordance with 14 DCMR § 3808.2 (1991), the Commission held a hearing on February 27, 2003 to provide the parties an opportunity to present

¹ 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 issues identified by the Commission. The Commission mailed the hearing notices by priority mail, with delivery confirmation.

When the Commission convened the hearing on February 27, 2003, the housing provider appeared; however, the tenant did not appear. The Commission reviewed the record and discovered that the record contains the United States Postal Service (USPS) tracking document, which reflects delivery to the tenant's address on November 21, 2002. Since there is record proof that the USPS delivered the Commission's hearing notice to the tenant, the Commission has satisfied its regulations which require the Commission to observe due process guarantees and provide the parties an opportunity to present arguments on the issues identified by the Commission.

II. ISSUES

In its notice of initiated review, the Commission raised the following three issues.

- A. 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 [performing] a separate calculation for each time period.
- B. Whether the hearing examiner erred when he dismissed the retaliation issue.
- C. Whether OAD properly served the decision and order on the parties.

Notice of Commission Initiated Review (RHC Aug. 21, 2002) at 2.

III. DISCUSSION

A. Whether OAD properly served the decision and order on the parties.

When the Commission received the certified record from the Office of Adjudication (OAD), the Commission discovered that the USPS returned the tenant's

copy of the decision and order to OAD. The USPS stamp on the returned priority mail envelope reflected that the USPS could not deliver the decision as addressed to the tenant, and the USPS was unable to forward the mail.

When the housing provider appeared for the Commission's hearing, he stated that he did not receive a copy of the decision issued by OAD. Moreover, there is no record proof that the USPS delivered the decision and order to the housing provider. The Commission entered the tracking information found in the OAD record and learned that the USPS did not have a delivery record for the decision, which OAD mailed to the housing provider.

The DCAPA requires the agency to provide "[a] copy of the decision and order and accompanying findings and conclusions ... to each party." D.C. OFFICIAL CODE § 2-509(e) (2001). Since there is no record proof that the parties received the decision and order issued by OAD, they were not afforded an opportunity to file motions for reconsideration or notices of appeal.

Accordingly, the Commission remands this matter to OAD with instructions to reissue the decision and order in accordance with D.C. OFFICIAL CODE § 42-3502.16(j) (2001).

B. 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 [performing] a separate calculation for each time period.

C. Whether the hearing examiner erred when he dismissed the retaliation issue.

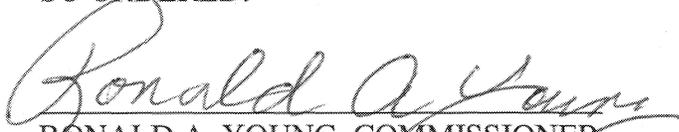
The Commission withdraws the remaining issues, since there is no record proof that the parties received the decision and order issued by OAD.

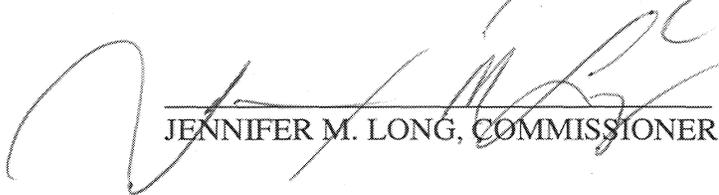
IV. CONCLUSION

For the foregoing reasons, the Commission remands TP 27,006 to the OAD. The Commission directs the OAD to reissue the decision and order to the parties, and include the customary instructions concerning the parties' right to file motions for reconsideration and notices of appeal.

The remaining issues raised by the Commission are withdrawn as moot.

SO ORDERED.


RONALD A. YOUNG, COMMISSIONER

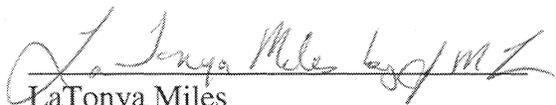

JENNIFER M. LONG, COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Decision and Order in TP 27,006 was mailed by priority mail with delivery confirmation and first class mail, postage prepaid, this 28th day of February 2003 to:

Nicola Elliott
2914 11th Street, N.W.
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Washington, DC 20001

Derick Noel
H & D Enterprises
5001 55th Avenue
Hyattsville, MD 20781


LaTonya Miles
Contact Representative