

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,150

In re: 3140 Q Street, N.W., Unit 1

Ward Two (2)

JAMES A. LINEN
Tenant/Appellant

v.

DOUGLAS LANFORD
Housing Provider/Appellee

ORDER DISMISSING HOUSING PROVIDER'S APPEAL

March 24, 2003

YOUNG, COMMISSIONER. This case is on appeal from the decision of the Department of Consumer and Regulatory Affairs (DCRA), Office of Adjudication (OAD), to the Rental Housing Commission. The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of 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 decision and order involved in this appeal was issued by the Office of Adjudication (OAD) on August 23, 2002. The OAD decision and order stated that appeals of the Rent Administrator's decision were due on or before September 12, 2002. On September 4, 2002, counsel for the tenant, James A. Linen, filed a timely notice of appeal in the Commission. On September 16, 2002, counsel for the housing provider,

Douglas Lanford filed an “Answer/Cross-Notice of Housing Provider/Appellee To Tenant/Appellant’s Notice of Appeal” (Answer/Cross Notice of Appeal). In the Answer/Cross Notice of Appeal the housing provider alleged errors in the August 23, 2002 decision of the Rent Administrator. The housing provider stated:

Cross-Appellant alleges the following error:

- (1) Whether the Housing Provider was entitled to the Small Landlord Exemption; and
- (2) Whether rent was properly increased when Landlord removed alleged “illegal” unit from market.

On November 20, 2002 counsel for the housing provider filed a “Brief in Support of Housing Provider/Appellee/Cross-Appellant to Accept Notice of Appeal as Timely Filed.” (Brief in Support of Notice of Appeal as Timely Filed). In his brief, the housing provider argues that the Commission’s rules are silent on the matter of cross-appeals. Accordingly, the housing provider argues, the Commission is required to follow its rule, 14 DCMR § 3828.1 (1998)¹, which requires that the Commission use as guidance the current rules of civil procedure followed by the Superior Court of the District of Columbia and the District of Columbia Court of Appeals (DCCA).

In the instant case, the housing provider asserts that the Commission should look to the DCCA’s rule, D.C.APP.R. 4(a)(1), for guidance. That rule provides, “[i]f a timely appeal is filed by a party, any other party to the

¹ The regulation, 14 DCMR § 3828.1 (1998), 45 D.C. Reg. 687 (1998) provides:

When these rules are silent on a procedural issue before the Commission, that issue shall be decided by using as guidance the current rules of civil procedure published and followed by the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

proceeding ... may file a Notice of Appeal within fourteen days of the date on which the first notice of appeal was filed.” The housing provider also states:

Under the Rules of the Rental Housing Commission, after the Rent Administrator issues a Decision and Order on a Tenant Petition, ‘the aggrieved party’ may file a Notice of Appeal with the Commission within (10) days of the Rent Administrator’s final decision, with three (3) days provided for service by mail. Title 14 DCMR §§ 3802.1-.2. Once the opposing party is served the Notice of Appeal, it then has an additional ten (10) days in which to ‘file an answer with the Commission.’ 14 DCMR § 3802.6. The term ‘answer’ is not defined. Nor do the regulations bar a cross-appeal. Absent such a definition of an ‘Answer,’ and since there is no bar to cross-appeals, the Commission can easily conclude that there is a clear absence of rules of procedure governing this situation.

Brief in Support of Notice of Appeal as Timely Filed at unnumbered page 3.

II. THE LAW

The Rental Housing Act of 1985 (Act) provides that an appeal from any decision of the Rent Administrator may be taken by the aggrieved party to the Rental Housing Commission within 10 days after the decision of the Rent Administrator. D.C. OFFICIAL CODE § 42-3502.16(h) (2001).

The Commission’s rules on the filing of appeals state:

Any party aggrieved by a final decision of the Rent Administrator may obtain review of that decision by filing a notice of appeal with the Commission.

14 DCMR § 3802.1 (1991).

A notice of appeal shall be filed by the aggrieved party within ten (10) days after a final decision of the Rent Administrator is issued; and if the decision is served by mail an additional three (3) days shall be allowed.

14 DCMR § 3802.2 (1991).

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.

14 DCMR § 3802.3 (1991).

Any party upon whom a notice of appeal has been served may file an answer with the Commission within ten (10) days of service and shall serve a copy on the other parties.

14 DCMR § 3802.6 (1991).

When the time period is ten (10) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

14 DCMR § 3816.3 (1991).

If a party is required to serve papers within a prescribed period and does so by mail, three (3) days shall be added to the prescribed period to permit reasonable time for mail delivery.

14 DCMR § 3816.5 (1991).

Contrary to the housing provider's argument, the Commission's regulations are clear, "any party" aggrieved by a final decision of the Rent Administrator may file a notice of appeal in the Commission. 14 DCMR § 3802.1 (1991). The regulations do not state, nor do they suggest, that either party has more than ten (10) business days to file a notice of appeal with the Commission from the day after the Rent Administrator's decision was sent to the parties. See Town Center, supra.

The housing provider's argument that the Commission has failed to define "Answer" in its regulations is also unpersuasive. The Commission's rule on answers to notices of appeal, 14 DCMR § 3802.6 (1991) provides: "Any party upon whom a notice of appeal has been served may file an answer with the

Commission within ten (10) days of service and shall serve a copy on the other parties.” (emphasis added.)

The Commission is required by law to dismiss appeals that are untimely filed, because time limits are mandatory and jurisdictional. Hija Lee Yu v. District of Columbia Rental Hous. Comm’n, 505 A.2d 1310 (D.C. 1986); Totz v. District of Columbia Rental Hous. Comm’n, 474 A.2d 827 (D.C. 1974). The Commission determines the time period between the issuance of the Rent Administrator’s decision and the filing of the notice of appeal by counting only business days, as required by its rules. Town Center v. District of Columbia Rental Hous. Comm’n, 496 A.2d 264 (D.C. 1985). Further, in Smith v. D.C. Rental Accommodations Comm’n, 411 A.2d 612 (D.C. 1980), the DCCA stated that the Commission erred when it improperly considered a cross-appeal which was untimely filed beyond the ten-day statutory period for filing an appeal provided for in the Act. Id. at 614.

III. THE CONCLUSION

In this case, the time period to timely file an appeal in the Commission commenced on August 23, 2002, which was the date the Rent Administrator’s decision was issued and served by mail on the parties. The thirteen (13) day period for filing an appeal, provided in rules, 14 DCMR § 3802.2-.3 (1991), ended on September 12, 2002. However, the housing provider did not file his “Answer/Cross-Notice of Housing Provider/Appellee To Tenant/Appellant’s Notice of Appeal” in the Commission until September 16, 2002, beyond the period allowed by the Act and the Commission’s rules.

Therefore, the housing provider's Answer/Cross-Notice of Housing Provider/Appellee To Tenant/Appellant's Notice of Appeal is untimely filed in the Commission, and consequently, the appeal issues raised in the Answer/Cross Notice of Appeal are dismissed.

SO ORDERED.


RONALD A. YOUNG, COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a copy of the **ORDER DISMISSING HOUSING PROVIDER'S APPEAL** in TP 27,150 was mailed, by priority mail, postage prepaid, with confirmation of delivery on this **24th day of March, 2003** to:

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