

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 27,231

In re: 244 36<sup>th</sup> Street, S.E., Unit A

Ward Seven (7)

CT ASSOCIATES  
Housing Provider/Appellant

v.

LINDA CAMPBELL  
Tenant/Appellee

**DECISION AND ORDER**

**August 15, 2003**

**BANKS, CHAIRPERSON.** This case is on appeal to the District of Columbia Rental Housing Commission from a decision and order issued by the Rent Administrator. The applicable provisions of the Rental Housing Act of 1985 (Act), 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 (DCMR), 14 DCMR §§ 3800-4399 (1991) govern the proceedings.

**I. THE PROCEDURES**

Linda Campbell, Tenant, filed tenant petition (TP) 27,231 on July 23, 2001. The tenant petition alleged in the preprinted areas: 1) a rent increase was taken while the rental unit was not in compliance with the housing code, 2) a rent increase was taken while a written lease, prohibiting such increases, was in effect, 3) services and facilities provided in connection with the rental unit were substantially reduced, 4) the housing provider used coercion to obtain a voluntary agreement, and 5) the housing provider

directed retaliatory action against the Tenant. The Tenant wrote on page 3 of the petition, "Please see CT Associates, Inc – management 120-day notice to vacate 501(f) versus original notice to vacate 501(h)(i)." The Office of Adjudication (OAD) held the hearing on April 1, 2002. Administrative Law Judge (ALJ) Rory Smith issued the decision and order on June 20, 2002. The decision and order contained the following findings of fact:

1. Petitioner occupied the premises of 224 36<sup>th</sup> Street, S.E., Apt. A, Washington, D.C. since September 22, 1997, and there is a signed lease in effect dated September 19, 1997.
2. Petitioner filed a complaint on July 9, 2001 with the Superior Court of the District of Columbia, Civil Division, Small Claims and Conciliation Branch, with case number 011390-01, for sewage damage and negligence for \$696.90.
3. Petitioner dropped her small claims suit on August 7, 2001 and acknowledged that Respondent satisfied the claim with payment of \$250.00.
4. Respondent's Registration/Claim of Exemption form was date-stamped March 6, 2001 by the Department of Consumer and Regulatory Affairs (DCRA) Housing Regulation Administration and was assigned exemption number 528785.
5. On March 15, 2001, Respondent served on Petitioner a 120 Day [sic] Notice to Vacate for renovations.
6. Petitioner, orally and in writing, between March 2001 and August 2001 complained to Respondent about necessary repairs to her unit as a result of a leaking pipe in the bathroom ceiling and two busted bathroom sink clamps.
7. Despite the fact that Petitioner did not make her keys available to Respondent, Petitioner was always available for the completion of the necessary repairs to her apartment.
8. Petitioner contacted DCRA, Housing Regulations and Enforcement Division, which resulted in an inspection of Respondent's premises on July 7, 2001. Housing Violation Notices were issued on July 9, 2001.

OAD Decision at 4.

The decision and order also contained the following conclusions of law:

1. Because no good cause was shown for the case to be continued, the motion for continuance is denied pursuant to 14 DCMR § 4008.6 [sic].
2. Res judicata/collateral estoppel does not apply. Henderson v. Snider Bros., Inc. 439 A.2d 481 (D.C. 1981).
3. Respondent properly filed a claim of exemption for the property located at 224 36<sup>th</sup> Street, S.E., Washington, D.C. with the RACD in accordance with 14 DCMR § 4101.1 and § 4101.7 [sic]; therefore, the property is exempt.
4. The 120-day Notice to Vacate issued to Petitioner by Respondent is not in compliance with § 42-3505.01.
5. Respondent retaliated against Petitioner for exercising her rights under § 502 of the Rental Housing Emergency [sic] Act of 1985. [sic] D.C. [sic] Code § 42-3505.02 (2001).

OAD Decision at 13.

## II. THE ISSUES

On July 9, 2002, the Housing Provider filed its appeal. The notice of appeal raised the following issues:

1. Issues set forth in Tenant Petition could have been litigated in Small Claims case that is part of the record, and thus should have been barred by *res judicata*/collateral estoppel.
2. Petitioner did not claim that the 120-day notice was not legally sufficient in her tenant petition; thus the Office of Adjudication should not have made a ruling on the issue.
3. The 120-day notice to vacate was legally sufficient.
4. The imposition of a \$5,000.00 fine for alleged insufficiency of 120-day notice was an abuse of discretion.
5. Petitioner did not establish presumption of retaliation.

6. If presumption was established, the record contains clear and convincing evidence that Housing Provider did not act in retaliation.
7. Fine of \$2,000.00 for retaliation was improper in light of the evidence presented.
8. The order that respondent issue a new 120-day notice was improper in light of the fact tenant no longer resides at the subject premises.
9. The order that respondent stop retaliating was improper in light of the fact that she is no longer a tenant.

### III. THE COMMISSION'S DECISION ON THE ISSUES

- 1. Whether the issues set forth in Tenant Petition could have been litigated in the Small Claims case that is part of the record, and thus should have been barred by *res judicata*/collateral estoppel.**

This issue relates to the Tenant's two claims of retaliation and improper 120-day eviction notice raised by the Housing Provider on appeal. On July 9, 2001, the Tenant filed the first action against the Housing Provider in the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia, based on conditions at the property involving sewage and the negligence of a maintenance man. On July 23, 2001, the Tenant filed the second action, the tenant petition, involved in this appeal. At this point the Tenant had two actions against the Housing Provider. Approximately two weeks later, on August 7, 2001, the Tenant entered into a settlement of the first action pending in the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia. The second action, the tenant petition, was heard in OAD on April 1, 2002. The Housing Provider raised the defense of res judicata and collateral estoppel at the OAD hearing. The ALJ issued a final decision and order on June 20, 2002, which stated

in a conclusion of law that res judicata did not apply to the two primary issues raised on appeal. See OAD Decision at 13.

“Res judicata is an affirmative defense that must be pleaded and established by the proponent.” Johnson v. District of Columbia Rental Hous. Comm’n, 642 A.2d 135, 139 (D.C. 1994). “To evaluate a claim of preclusion, the trier of fact must ‘have before it the exhibits and records involved in the prior cases....’” Id. at 139 citing Block v. Wilson, 54 A.2d 646, 648 (D.C. 1947). When the parties are the same, res judicata applies to not only the claim that was decided, “but also as to every ground which might have been presented.” Henderson v. Snider Bros., Inc. 439 A.2d 481 (D.C. 1981) (emphasis added). “Under the doctrine of claim preclusion or res judicata, when a valid final judgment has been entered on the merits, the parties or those in privity with them are barred, in a subsequent proceeding, from relitigating the same claim or any claim that might have been raised in the first proceeding (emphasis added).” Davis v. Davis, 663 A.2d 499, 501 (D.C. 1995).

At the OAD hearing, the ALJ took official notice of the petition and the documents attached to it. See OAD Decision at 3. Record (R.) at 107. One of the documents attached to the petition was the Tenant’s Statement of Claim filed in the Small Claims and Conciliation Branch of the Superior Court. R. at 21. The text of the Statement of Claim, No. SC 11390-01, follows:

Sewage damage and negligence of maintenance supervisor. It occurred Feb. 21, 2001, incurring \$95.94 of damaged appliances and a mop. Also[sic]room<sup>[1]</sup> flood damages that occurred on March 30, 2001. The damages [sic]<sup>[2]</sup> \$150.96 to decorative accessories in bathroom area, door

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<sup>1</sup> Part of this word was cut off on the file copy.

<sup>2</sup> This is the second word cut off on the file copy.

mat, [sic]mped,<sup>[3]</sup> to and from and loss wages from job for 2 days forced by [sic]<sup>[4]</sup> manager.

R. at 21.

The second document related to the Tenant's Small Claims action was the settlement document, which the Housing Provider introduced into evidence. Respondent (Exh.) 1, R. at 69. That document is in the form of a letter dated August 7, 2001, addressed to the Small Claims and Conciliation Branch of the Superior Court, and signed by the Tenant. It states:

I am writing this letter to discontinue claim of defendants. CT Associates/WDCI Partnerships, Inc. They have satisfied claim with payment of \$250. The Small Claims Docket Number is 11390-01, and hearing was scheduled for August 8, 2001.

Respondent's Exh. 1, R. at 69.

The Commission addresses the two sub-issues related to res judicata in this appeal. Those issues are the Tenant's claim of retaliation and the claim of improper 120-day eviction notice, in the second action, the tenant petition.

**A. Whether Res Judicata Applied to the Tenant's Claim of Retaliation**

The Superior Court and this agency have concurrent jurisdiction over claims related to reduction of services and facilities, which can be proved by showing violations of the housing code. Robinson v. Edwin B. Feldman Company, 514 A.2d 700 (D.C. 1986). The Superior Court also has concurrent jurisdiction over retaliation claims. DeSzunyogh v. William C. Smith & Company, 604 A.2d 1 (D.C. 1992). Therefore, the Tenant could have litigated the retaliation claim and the reduction of services and

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<sup>3</sup> This is the third word cut off on the file copy.

<sup>4</sup> The word in front of the word "manager" is not readable on the file copy of the Statement of Claim.

facilities in the first action she brought in the Small Claims and Conciliation Branch of the Superior Court, since that court had jurisdiction over both retaliation and reduction of services and facilities.

The court held in Yamaha Corp. of Am. v. United States, 961 F.2d. 245, 257-58 (D.C. Cir. 1992), cert. denied, 506 U.S. 1078 (1993):

If a new legal theory or factual assertion put forward in the second action is related to the subject-matter and relevant to the issues that were litigated and adjudicated previously, so that it could have been raised, the judgment is conclusive on it despite the fact that it was not expressly pleaded or otherwise urged (emphasis added).

In the instant appeal, the Tenant could have raised the retaliation claim in the Small Claims and Conciliation Branch of the Superior Court. The retaliation claim was related to the claim of reduction of services and facilities in the Tenant's rental unit, based on a housing inspection on July 7, 2001, two days before the first action was filed in the Small Claims and Conciliation Branch of the Superior Court. The housing violation notice alleged that the Tenant's rental unit had the following housing code violations: 1) a defective smoke detector, 2) windows in the living room and bathroom with defective hardware, 3) windows in the bathroom and kitchen do not fit within the frame, and 4) the cooking facility had defective parts. R. at 18 & 19. The court had jurisdiction over these claims. At the OAD hearing the Housing Provider raised the defense of res judicata and collateral estoppel to both the retaliation claim and the housing code violation claims. The Housing Provider introduced into evidence the document containing the settlement of the Small Claims action. Respondent's Exh.1. The Tenant gave testimony at the hearing and the ALJ took official notice of the copy of the first action, Statement of Claim, in the Small Claims and Conciliation Branch of the

Superior Court attached to her tenant petition, that proved the existence and type of claims in the first action, i.e., the sewage damage and the damage in the bathroom. The settlement was also proved by the Tenant's letter submitted into evidence by the Housing Provider. The ALJ made the following findings of fact:

2. Petitioner filed a complaint on July 9, 2001 with the Superior Court of the District of Columbia, Civil Division, Small Claims and Conciliation Branch, with case number 011390-01, for sewage damage and negligence for \$696.90.
3. Petitioner dropped her small claims suit on August 7, 2001 and acknowledged that Respondent satisfied the claim with payment of \$250.00.

The ALJ concluded:

6. Res judicata/collateral estoppel does not apply. Henderson v. Snider Bros., Inc. 439 A.2d 481 (D.C. 1981).

The substantial evidence in the record<sup>5</sup> shows that the Housing Provider through the Tenant's testimony, and the two documents filed in the Small Claims and Conciliation Branch of the Superior Court, specifically, the Tenant's Statement of Claim and the settlement letter, established and carried its burden of proof on res judicata/collateral estoppel, by showing there was a prior action, in the Small Claims and Conciliation Branch of the Superior Court, where the Tenant could have raised the issue of retaliation. Since she did not, she was precluded from raising the retaliation claim in

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<sup>5</sup> Pursuant to D.C. OFFICIAL CODE § 42-3502.16 (2001):

The Rental Housing Commission may reverse, in whole or in part, any decision of the Rent Administrator which it finds to be arbitrary, capricious, an abuse of discretion, not in accordance with the provisions of this chapter, or unsupported by substantial evidence on the record of the proceedings before the Rent Administrator, or it may affirm, in whole or in part, the Rent Administrator's decision.

the tenant petition, because she had the opportunity to raise it in the Small Claims and Conciliation Branch of the Superior Court.

Accordingly, the ALJ is reversed on the conclusions of law that the affirmative defense of res judicata does not apply, and that the Housing Provider retaliated against the Tenant. Consequently, the \$2,500.00 fine against the Housing Provider for retaliation is vacated. Housing Provider issues 5, 6, 7, and 9 are denied as moot, because of the Commission's reversal of the ALJ.

**B. Whether Res Judicata Applied to the Tenant's Claim of Improper 120-day Eviction Notice.**

Similarly, the Small Claims and Conciliation Branch of the Superior Court also had concurrent jurisdiction over the Tenant's claim of lack of proper 120-day eviction notice. See Zurlo v. Marra, TP 27,349 (RHC Feb. 26, 2003) at 6 (where the Commission referred to the court's opinion in the Small Claims and Conciliation Branch of the Superior Court, which found that the Housing Provider wrongfully evicted the tenant.)

On eviction, the Act, in relevant part, provides:

(1) A housing provider may recover possession of a rental unit for the immediate purpose of making alterations or renovations to the rental unit which cannot safely or reasonably be accomplished while the rental unit is occupied, so long as the plans for the alterations or renovations have been previously filed with and approved by the Rent Administrator and the plans demonstrate that the proposed alterations or renovations cannot safely or reasonably be accomplished while the unit is occupied. The housing provider shall serve on the tenant a 120-day notice to vacate in advance of action to recover possession of the rental unit. The notice to vacate shall comply with and notify the tenant of the tenant's right to relocation assistance under the provisions of subchapter VII of this chapter.

(2) Immediately upon completion of the proposed alterations or renovations, the tenant shall have the absolute right to rent the rental unit. (emphasis added.)

(3) Where the renovations or alterations are necessary to bring the rental unit into substantial compliance with the housing regulations, the tenant may rerent at the same rent and under the same obligations that were in effect at the time the tenant was disposed, if the renovations or alterations were not made necessary by the negligent or malicious conduct of the tenant.

D.C. OFFICIAL CODE § 42-3505.01(f)(1)-(3).

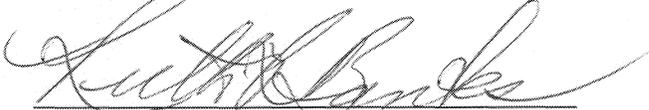
The Tenant attached to the tenant petition the Statement of Claim, R. at 21, which she filed in the Small Claims and Conciliation Branch of the Superior Court, and which the ALJ considered in making his decision. OAD Decision at 2 & 3. A review of that document, supra at pp. 5 & 6, shows that the Tenant failed to raise the claim of lack of proper 120-day eviction notice for adjudication, although the court, as stated above, had jurisdiction over that claim. Since the Housing Provider raised the defense of res judicata to the claim in the petition that the Tenant did not receive a proper 120-day eviction notice, and the court had jurisdiction over that eviction claim, if the Tenant had raised it in the first action, the ALJ erred in the conclusion that the affirmative defense of res judicata did not apply to the Tenant's claim of improper 120-day eviction notice in the petition. Therefore, the Commission reverses the ALJ in the conclusions of law that res judicata does not apply, and that the Housing Provider's notice to vacate was not in compliance with the Act, because the latter could have been adjudicated in the first court action rather than the tenant petition, the second action against the Housing Provider. Consequently, the \$5,000.00 fine for the improper eviction notice is vacated. Housing Provider appeal issues numbered 2, 3, 4, and 8 are denied as moot, because the ALJ is

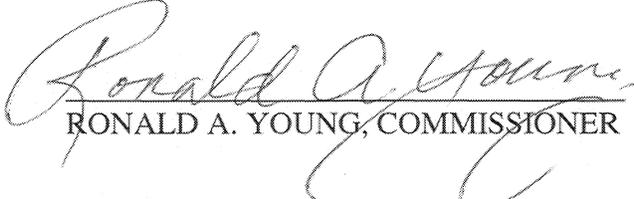
reversed on the erroneous conclusion of law that the affirmative defense of res judicata does not apply.

#### IV. CONCLUSION

The ALJ is reversed and the two fines totaling \$7500.00 are vacated.

SO ORDERED.

  
RUTH R. BANKS, CHAIRPERSON

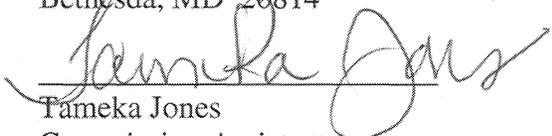
  
RONALD A. YOUNG, COMMISSIONER

#### CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in TP 27,231 was mailed by priority mail, with confirmation of delivery, postage prepaid this **15<sup>th</sup> day of August, 2003**, to:

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