

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,264

In re: 1401 Tuckerman Street, N.W., Unit 301

Ward Four (4)

WANDA McKINNEY
Tenant/Appellant

v.

SEBRON J. KING
Housing Provider/Appellee

DECISION AND ORDER

July 24, 2002

PER CURIAM. This case is on appeal to the District of Columbia Rental Housing Commission (Commission) from the District of Columbia Department of Consumer and Regulatory Affairs, Office of Adjudication (OAD). The housing provider filed the appeal 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 Act, the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and Title 14 of the District of Columbia Municipal Regulations, 14 DCMR §§ 3800-4399 (1991) govern these proceedings.

I. PROCEDURAL HISTORY

On July 15, 2000 Wanda McKinney, the tenant/appellant, entered a written one-year lease on Unit 301 at 1401 Tuckerman Street, N.W., a 29-unit, mid-rise apartment building. On August 20, 2001, the tenant filed Tenant Petition (TP) 27,264 with the Rental Accommodations and Conversion Division (RACD). The sole issue in the

tenant's petition was whether the housing provider charged a rent that exceeded the legally calculated rent ceiling for the tenant's unit.

On December 10, 2001, the OAD conducted a hearing with Hearing Examiner Rohulamin Quander presiding. Both parties appeared pro se. On March 11, 2001, the hearing examiner issued the decision and order in TP 27,264, and made the following pertinent findings of fact:

1. Sebron J. King of Tuckendall, Inc., has managed the subject premises at all relevant times, and is the Respondent in this matter;¹
2. Petitioner has paid rent in the amount of \$700.00 per month since the inception of her tenancy in August 2000;
3. Respondent filed with RACD on June 29, 1999 an Amended Registration Form which adjusted the rent ceiling for unit #301 from \$543.00 to \$701.16² per month;
4. Respondent's rent charge of \$700.00 does not exceed the legally calculated rent ceiling of \$701.16 for Petitioner's unit.

McKinney v. King, TP 27,264 (OAD Mar. 11, 2002) at 5. The hearing examiner made the following conclusions of law:

1. Petitioner failed to prove by a preponderance of the evidence that the rent charged by Respondent exceeds the legally calculated rent ceiling for the Petitioner's unit, in violation of the Act.

¹ Sebron King, President of Tuckendall, Inc., the corporation that owns the subject property, was named as the housing provider in this case. At the OAD hearing, James Young stated that Mr. King was hospitalized on the day of the hearing, and at his request, Mr. Young, accompanied by Phillip Hunter, appeared on Mr. King's behalf. Both Young and Hunter identified themselves as "landlord aides" on the hearing attendance sheet. See Record (R.) at 22. During the hearing, Mr. Young told the examiner that he was waiting for Virgil Hood, the Vice President of Tuckendall, Inc., to enter an appearance, but, when asked by the hearing examiner whether Mr. Young was "with the [owner] corporation," he answered in the affirmative. OAD Hearing CD-ROM (Dec. 10, 2001).

² The regulation, 14 DCMR § 4204.8 (1991), provides: "In calculating a rent ceiling adjustment, any fraction of a dollar of forty-nine cents (\$.049) or less shall be rounded down to the nearest dollar, and any fraction of fifty cents (\$.50) or more shall be rounded up to the nearest dollar." Therefore, the rent ceiling quoted as \$701.16, should be rounded down to \$701.00.

2. The Examiner is compelled to dismiss TP 27,264.

Id. at 3. In accordance with his findings of fact and conclusions of law, the hearing examiner dismissed the tenant's petition with prejudice.

The tenant filed a timely notice of appeal on March 15, 2002. On April 3, 2002, the housing provider responded with a motion to dismiss the appeal. The Commission issued an order denying the motion and proceeded with the scheduled hearing on June 4, 2002.³

II. ISSUES ON APPEAL

The following are the issues stated verbatim in the tenant's notice of appeal:

1. Mr. Quander stated that the Respondent filed with RACD on June 29, 1999 an Amended Registration Form which adjusted the rent ceiling for unit #301 from \$543.00 to \$701.16 per month. **As of the date of this date [sic] of this Decision, Petitioner [sic] has failed to provide the proper document.**
2. Mr. Rohulamin Quander did not thoroughly consider that the property management did not file [sic] an amendment for the rent increase.
3. My argument is ... each apartment that become[s] vacant there has to be an Amendment [sic] Registration Form filed letting the DRCM [RACD/DCRA] know there has been a rent increase. For apartment **#301 that was not done.** He can not do a rent increase unless the apartment under #301 has been vacant and a comparable rent increase had been done on the apartment that [is] under #301 or above #301.
4. Mr. Quander also stated that the [sic] "The Respondent has 24 hours to produce the copies of the records which were [the] basis of Mr. Young's testimony to the Examiner and the Petitioner. Respondent complied with the Examiner's request and Petitioner was given a copy of Respondent's records (see Respondent's Exhibits 1-8 post hearing submissions) and an opportunity to respond to the submission of these documents in writing to the Examiner. **As of the date of this Decision, Petitioner [sic] has failed to do so.["]**

³ When James Young appeared at the Commission hearing, he identified himself as a "personal friend" of the late Sebron King, stating that he would only be "assisting" Virgil Hood, Vice President of Tuckendall, Inc., who appeared on behalf of the corporation. RHC Hearing CD-ROM (June 4, 2002). The regulation permits a "family member or close personal friend of a party" to present that party's case if he or she is incapable of doing so because of a "language barrier, physical infirmity, or mental incapacity," provided that no compensation is paid for the service. 14 DCMR § 3812.4(d) (1991).

5. Mr. Quander stated to I Wanda McKinney in my hearing off [sic] the Amended Registration Form that I read to him the rent was 508.000 700.00 [sic] but, he quoted something totally different in this decision[.]
6. Mr. Young alleged that Respondent's agent Mr. Hood had file[d] a stamped copies [sic] of documents which were Amended Registration Forms, that demonstrated pursuant to Section 213(b) of the Act, petitioner's rent ceiling was increased [from] 508.00 [to] 700.00 per month, **but he was not able to provide his copy and that is the Management['s] responsibility to provide a legal copy.**
7. Mr. Quander says, "[t]he Examiner determines that Respondent filed an Amended Registration Form date stamped by RACD June 29, 1999, which adjusted the rent ceiling for unit #301 of the subject housing accommodation from \$543.00 to \$701.00 per month." **He did not provide those paper[s] in the hearing.**
8. When each apartment has a rent increase an Amendment has to be filed and Mr. Quander is saying because the management filed an Amendment [sic] Registration Form in June 29, 1999, for the base [sic] unit #307 based on the comparable unit increase it can also apply to unit #301.

Notice of Appeal at 1-2.

III. DISCUSSION

A. Whether the hearing examiner committed error in considering an amended registration form dated June 29, 1999 that was not presented until after the hearing and allegedly never served on the tenant.

B. Whether the examiner erroneously failed to consider the tenant's assertion that the housing provider failed to file the necessary rent ceiling adjustment forms with RACD.

C. Whether the hearing examiner erred in concluding that the housing provider served the tenant with a copy of the rent ceiling adjustment forms, thereby providing her with an opportunity to respond to the post-hearing submissions.

D. Whether the examiner erred in allowing the housing provider to submit post-hearing evidence of rent ceiling adjustments from \$508.00 to \$700.00 based on Section 213(b) of the Act when the housing provider failed to produce the evidence at the hearing.

E. Whether the hearing examiner committed error in relying on the housing provider's post-hearing submission of a June 29, 1999 amended registration form that indicated a rent ceiling adjustment from \$543.00 to \$701.00.⁴

The sole allegation in the tenant's petition was that the housing provider was charging the tenant rent that exceeded the legally calculated rent ceiling for the tenant's unit. To support her case at the OAD hearing, the tenant presented a one-year, residential lease effective July 15, 2000, which listed the monthly rent as \$700.00, and a rent receipt for August 2001 indicating payment of \$725.00.⁵ (R. at 6-7). To support her claim that the rent actually charged exceeded the legal rent ceiling, the tenant offered a Certificate of Election of Adjustment of General Applicability, which the housing provider filed with RACD on September 24, 1998. See Tenant's Exhibit 3. The document reflected a rent ceiling of \$543.00 and a rent charge of \$533.00 for Unit 301, effective November 1, 1998.

The tenant testified that when she inspected the RACD records, the lone rent ceiling adjustment form from September 24, 1998, which she introduced, was the most recent form within the housing provider's registration file for 1401 Tuckerman Street, N.W. The tenant further testified that the RACD staff advised her that there had been no further rent ceiling adjustment forms filed for the subject property after September 1998. The Commission has previously stated in Bonheur v. Oparaocha, TP 22, 970 (RHC Feb. 4, 1994) (citation omitted) (quoting McDow v. Danson, TP 11,686 (RHC Apr. 17, 1987)):

⁴ Issues A through E correspond to issues number one, two, four, six and seven as numerated in the tenant's Notice of Appeal. All five issues are consolidated and will be discussed as a single issue because each relates to the submission of post-hearing evidence.

⁵ The record contains a photocopy of a receipt dated August 18, 2001 for the tenant's rent payment of \$725.00, which included the August 2001 rent payment of \$700.00 and a \$25.00 late fee. (R. at 7).

[T]he tenant alleging a rent ceiling violation has the burden of coming forward with evidence to establish that the rent charged exceeded the allowable rent ceiling. This burden is met by testimony as to what the monthly rent is and the introduction of the landlord's registration file documenting a lower rent ceiling. The burden then shifts to the landlord to show that the landlord's registration file is erroneous.

In the instant case, both parties testified at the OAD hearing that the rent charged was \$700.00 per month from the inception of the tenancy. Therefore, once the tenant offered evidence that the rent charged exceeded the allowable rent ceiling, "the burden shifted to the housing provider to show that the registration file was erroneous." Bonheur at 5.

As part of his case, the housing provider's "aide," Mr. Young, attempted to rebut the tenant's claim of a lower rent ceiling with testimony that the housing provider had filed the required rent ceiling adjustment forms to increase the rent ceiling. However, Mr. Young was not able to produce the actual documents to support his testimony. He then explained to the examiner that Virgil Hood, the Vice President of Tuckendall, Inc., the owner corporation, was supposed to bring the necessary documents to the hearing that morning. Mr. Young also expressed his mistaken belief that since the RACD office was in the same building, the RACD should have provided the hearing examiner with the housing provider's registration file so that the examiner would have been able to refer to the missing documents during the hearing.⁶

⁶ "The proponent of a rule or order shall have the burden of establishing each finding of fact essential to the rule or order by a preponderance of the evidence." 14 DCMR § 4003.1 (1991). In other words, a party must come to a hearing prepared to prove his or her own case. Administrative hearings are similar to civil court proceedings in that they adhere to the traditional adversarial system, guided by principles of due process. As part of that system, the Rent Administrator sits as a neutral, unbiased trier of fact while the parties present evidence to support a claim or defend against one. The District of Columbia Court of Appeals has consistently held that "the essence of the judicial role is neutrality." Byrd v. United States, 377 A.2d 400, 404 (D.C. 1977) cited in Garrett v. United States, 642 A.2d 1312, 1315 (1994). Therefore, the onus is on each of the contesting parties to offer the necessary evidence to prove their respective cases.

In response, the hearing examiner agreed to take what he called “administrative notice”⁷ of the documents to which Mr. Young referred and gave the housing provider twenty-four hours to submit the rent ceiling adjustment forms. As a result, the hearing examiner allowed the housing provider to introduce several rent ceiling adjustment forms that purported to establish the rent ceiling at \$701.00 at the time the tenant began her tenancy.⁸

⁷ The law permits hearing examiners to take “official notice” of certain types of documentary evidence not appearing in the record. Agency regulation, 14 DCMR § 4009.7(b) (1991), states: “During a hearing, a hearing examiner, on his or her own motion or on the motion of a party, may take official notice of any information contained in the record of the RACD.” (emphasis added). See also D.C. OFFICIAL CODE § 2-509(b) (2001). However, in the instant case, the examiner did not attempt to take official notice of information contained in the actual RACD record. Rather, the examiner sought to take “administrative notice” of documents from the housing provider’s copies of its records, in contravention of the DCAPA and agency rules. Moreover, § 2-509(b) of the DCAPA provides: “Where any decision of . . . 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.” (emphasis added). See also Carey v. District Unemployment Compensation Bd., 304 A.2d 18 (D.C. 1973). The hearing examiner in the instant case did not take official notice of agency records, and there was no occasion for the tenant to show the contrary. Consequently, the hearing examiner failed to follow the standard for taking official notice of agency records as enunciated in the DCAPA and Carey.

In addition, D.C. OFFICIAL CODE § 2-509(b) (2001) further provides: “Every party shall have the right to present in person or by counsel his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.” By permitting the housing provider to submit the rent ceiling adjustment forms after the hearing closed, the examiner denied the tenant her right to “conduct cross-examination for a full and true disclosure of the facts.” Id.

⁸ Under the heading “Evidence and Pleadings Considered,” in the examiner’s decision and order, the housing provider’s exhibits, all of which were submitted after the hearing, are listed as:

- Exhibit #1 – Post Hearing Submission (PHS) Amended Registration dated 6/29/99
- Exhibit #2 – PHS Certificate of Election dated 3/1/00
- Exhibit #3 – PHS Certificate of Election dated 4/12/00
- Exhibit #4 – PHS Certificate of Election date 4/1/00
- Exhibit #5 – PHS Certificate of Election dated 6/29/00
- Exhibit #6 – PHS Certificate of Election dated 4/20/01
- Exhibit #7 – PHS Certificate of Election dated 9/13/01; and
- Exhibit #8 – PHS Tenant Notice of Increase of General Applicability effective 12/1/01.

McKinney, TP 27,264 (OAD Mar. 11, 2002) at 2. The Commission notes that the date stamp on Exhibit 2 actually reads 3/17/00. Also, Exhibit 4 is not a separate exhibit, but actually a duplicate copy of Exhibit 3, which is date stamped 4/12/00.

The examiner admitted the post-hearing submissions and relied upon them in his decision and order in violation of the law. As a general rule, a hearing examiner is prohibited from allowing evidence into the record after the conclusion of a hearing under the District of Columbia Court of Appeal's (DCCA) decision in Harris v. District of Columbia Rental Hous. Comm'n, 505 A.2d 66 (D.C. 1986). In Harris, the examiner held the record open for eleven days after the hearing closed. During the eleven-day period, the former landlord submitted two sworn affidavits pertaining to evidence not in the record. The hearing examiner refused to admit the post-hearing submissions or to consider them as part of the official record on which she based her decision and order. The DCCA held: "Since the documents submitted post-hearing contained new evidence not a part of the public record, the Examiner did not err in excluding them from her consideration." Harris, 505 A.2d at 69.⁹

Without the housing provider's post-hearing submissions, the record is devoid of an amended registration form, certificate of election, or any other document that controverts the \$543.00 rent ceiling established by the September 24, 1998 certificate of election (effective November 1, 1998), which was produced by the tenant. See T. Exh. 3. Absent supporting documentary evidence, Mr. Young's testimony is insufficient to meet the burden of proof necessary to rebut the tenant's evidence. The DCCA has held that "[s]ome form of reporting requirements or 'paper trail' is essential for effective rent

⁹ The Harris court distinguished post-hearing submissions of evidence from other types of post-hearing submissions. The court excluded from its holding legal memoranda submitted post-hearing, stating: "Ordinarily, the record closes upon termination of the hearing below. However, the record may be held open for the post-hearing submission of memoranda." Id. at 69. See also Monaco v. District of Columbia Bd. of Zoning Adjustment, 407 A.2d 1091, 1102 (D.C. 1979) (holding it to be proper for an agency to have considered material submitted post-hearing which did not contain new evidence, but rather was merely a memorandum of conclusions which could be drawn from evidence already in the record).

control.” Charles E. Smith Mgmt., Inc. v. District of Columbia Rental Hous. Comm’n, 492 A.2d 875, 878 (D.C. 1985). See e.g., Redmond v. Majerle Mgmt., Inc., TP 23,146 (RHC Mar. 26, 2002) (stating that a housing provider’s statements alone that a tenant was behind in her rent was not sufficient to sustain the landlord’s burden of proof without documentary evidence to substantiate his claim). See also 14 DCMR § 4204.10 (1991).

Agency regulations require the Commission to reverse final decisions on appeal from the Rent Administrator that the Commission finds to be based on findings of fact unsupported by substantial evidence on the record. See 14 DCMR § 3807.1 (1991). Accordingly, the Commission reverses the hearing examiner’s ruling that the rent charged did not exceed the legal rent ceiling for the tenant’s unit because substantial evidence in the record does not support his finding. To the contrary, substantial record evidence produced by the tenant shows that the rent charged (\$700.00) exceeded the legally calculated rent ceiling (\$543.00), which constitutes a violation of D.C. OFFICIAL CODE § 42-3502.06(a) (2001) of the Act. Therefore, in accordance with D.C. OFFICIAL CODE § 42-3509.01 (2001), the housing provider is liable for the rent that was demanded in excess of the maximum allowable rent ceiling, and the tenant is entitled to a rent refund and a rent roll-back.

F. Whether the housing provider failed to implement a vacancy-based rent ceiling adjustment in accordance with the requirements of the Act.

G. Whether the June 29, 1999 vacancy rent ceiling adjustment based on a “comparable” unit can also apply to the subject unit.

Issues F and G relate to the legality of a vacancy-based rent ceiling adjustment, which the housing provider allegedly took in June 1999 pursuant to Section 213 of the Act. The housing provider sought to prove the legitimacy of charging the tenant \$700.00

for rent by submitting several rent ceiling adjustment forms post-hearing, including a June 29, 1999 amended registration form indicating a vacancy increase based on a comparable unit. However, as discussed supra, the housing provider did not introduce any of the documentary evidence on which he relies until after the hearing. Consequently, under Harris, the hearing examiner improperly admitted the documents into the record.

The Commission's holding that the hearing examiner erred in admitting post-hearing evidence into the record disposes of any need to inquire into rent adjustment forms that, as a matter of law, cannot be recognized as part of the record. The Commission, like the hearing examiner, is strictly bound to base its decisions only on the record evidence. See D.C. OFFICIAL CODE § 2-509(c) (2001). Therefore, Issues F and G are dismissed as moot.

H. Whether "Mr. Quander stated to I Wanda McKinney in my hearing off [sic] the Amended Registration Form that I read to him the rent was 508.00 700.00 [sic] but, he quoted something totally different in this decision."

The sole remaining issue, listed as the fifth among the eight issues set forth in the tenant's notice of appeal, is quoted above. The Commission reviewed the pro se tenant's notice of appeal carefully to determine if the hearing examiner committed reversible error. See Dixon v. Majeed, TP 20,658 (RHC Oct. 4, 1989). After reviewing this issue the Commission concludes that, as written, the issue fails to clearly articulate any specific legal error that the examiner committed. Although it is reasonably clear that the tenant is alleging that the examiner in some way misquoted a figure for the rent in his decision and order, she fails to articulate precisely how such a mistake would have amounted to legal error or how it would have prejudiced her case.

The agency's regulation, 14 DCMR § 3802.5(b) (1991), requires that the notice of appeal contain "a clear and concise statement of the alleged error" The Commission may not speculate as to what a tenant *intends* to allege, and will not do so here. See e.g., Tenants of 2480 16th St., N.W. v. Dorchester Hous. Ass'n, CI 20,739 & CI 20,741(RHC Jan. 14, 2000). This issue, therefore, is denied for lack of clarity in stating the alleged error, as required by the Commission's regulations.

IV. CONCLUSION

For the foregoing reasons, the Commission reverses the hearing examiner's finding that the rent being charged did not exceed the legally calculated rent ceiling for the tenant's unit. Substantial evidence in the existing record shows that the rent charged exceeded the legally calculated rent ceiling filed with RACD. Both parties testified that the tenant's rent was \$700.00 from the inception of her tenancy. The tenant produced Tenant's Exhibit 3, a September 24, 1998 Certificate of Election of Adjustment of General Applicability, which set the rent ceiling at \$543.00 effective November 1, 1998. Since the housing provider's rent ceiling adjustment forms are stricken from the record because they were submitted post-hearing, Tenant's Exhibit 3, is un rebutted. Therefore, the tenant supported her claim that the rent exceeded the legal rent ceiling by a preponderance of the evidence. The burden of proof then shifted to the housing provider, who failed to offer documentary proof to rebut the tenant's claim *during* the OAD hearing.

Consequently, because the housing provider charged the tenant \$700.00 in rent from the beginning of the tenancy, the housing provider is liable for the amount by which

the rent exceeded the \$543.00 rent ceiling and a roll-back of the rent to \$543.00, which is the maximum allowable rent ceiling.

The case is remanded to the examiner to make factual findings and conclusions of law in accordance with this decision and order, to calculate the rent refund for the period of the violation, and to impose interest through the date of the examiner's remand decision in accordance with D.C. OFFICIAL CODE § 42-3509.01 of the Act and 14 DCMR § 3826 (1998).¹⁰ See e.g., Redmond v. Majerle Mgmt., Inc., TP 23,146 (RHC Mar. 26, 2002) at 37-43 (where the Commission calculated a rent refund and imposed interest in accordance with 14 DCMR § 3826 (1998)).

¹⁰ The regulation, 14 DCMR § 3826, provides:

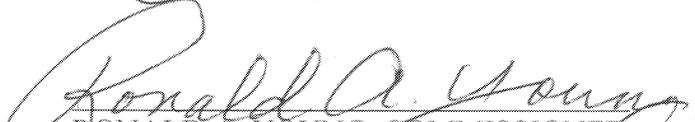
- 3826.1 The Rent Administrator or the Rental Housing Commission may impose simple interest on rent refunds, or treble that amount under § 901(a) or § 901(f) of the Act.
- 3826.2 Interest is calculated from the date of the violation (or when service was interrupted) to the date of the issuance of the decision.
- 3826.3 The interest rate imposed on rent refunds or treble that amount, if any, shall be the judgment interest rate used by the Superior Court of the District of Columbia pursuant to D.C. Code § 28-3302 (c), on the date of the decision.
- 3826.4 Post judgment interest shall continue to accrue until full payment, or an intervening decision, order, or judgment modifies or amends the judgment or accrual of interest.

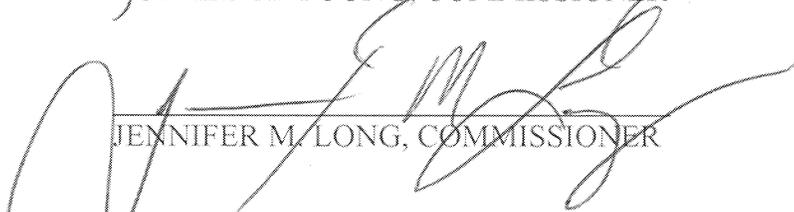
See 45 D.C. Reg. 686-87.

Pursuant to Wire Properties v. District of Columbia Rental Hous. Comm'n, 476 A.2d 679 (D.C. 1984), the examiner shall *not* conduct a hearing de novo nor should any new evidence be admitted into the record.

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON


RONALD A. YOUNG, COMMISSIONER

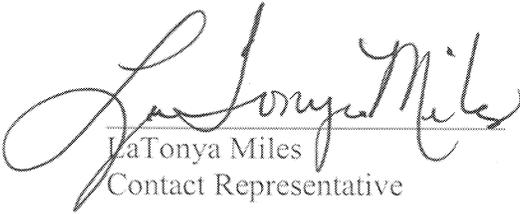

JENNIFER M. LONG, COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DECISION and ORDER** in TP 27,264 was mailed by priority mail with delivery confirmation this 24th day of July, 2002 to:

Wanda McKinney
1401 Tuckerman Street, N.W. #301
Washington, DC 20011

Virgil Hood
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LaTonya Miles
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