DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,264

WANDA McKINNEY
Tenant/Appellant

v.

SEBRON J. KING
Housing Provider/Appellee

ORDER ON MOTION TO DISMISS APPEAL

May 24, 2002

BANKS, CHAIRPERSON. This case is on appeal to the 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

On March 11, 2002, the Office of Adjudication issued the decision and order dismissing the petition involved in this appeal. On March 15, 2002, Wanda McKinney, the Tenant, filed a pro se notice of appeal. She raised eight (8) issues in the notice of appeal. They are:

1. Whether, as of the date of the decision, the Housing Provider failed to file an amended registration form.
2. Whether the hearing examiner properly considered that the property management did not file an amended registration form for the rent increase.

3. Whether management filed an amended registration form for a vacancy on her rental unit, and whether a valid comparable vacancy rent increase was properly taken on her unit.
4. Whether the hearing examiner's decision correctly found that the Tenant failed to respond to the post hearing submissions of the Housing Provider.
5. Whether the hearing examiner properly stated in the decision the amounts of the rent and rent ceiling for her unit.
6. Whether management provided a legal copy of the relevant amended registration form at the hearing.
7. Whether the June 29, 1999 Amended Registration Form was submitted into evidence at the hearing.
8. Whether unit 307 is comparable to unit 301, where the Tenant resides, for a rent increase based on a vacancy of a comparable unit.

Notice of Appeal at 1-2.

The Tenant requested that the Commission reverse the hearing examiner, because a copy of the Amended Registration Form was not served on her, and because the hearing examiner knew one of the witnesses, Mr. Hood. Id.

On March 21, 2002, the Commission scheduled the appeal hearing for June 4, 2002. On April 3, 2002, the Housing Provider filed a motion to dismiss the appeal, which stated:

1. That the Amended Registration form was filed on June 29, 1999, and it complied with Section 213(a)(b) of the Rental Housing Act of 1985 (Act).

2. That the hearing examiner considered the Amended Registration Form under section 213 of the Act, but should have considered it under section 216(a)(b) and 206(e).[1]
3. That under section [sic] 205(g) of the Act no amendment shall be required for a change in rent under Section 206(b).[2]
4. That the Housing Provider was required by the hearing examiner to obtain copies of DCRA[3] records within 24 hours, but Mr. Young, a DCRA employee, obtained copies of the records from the RACD[4] and took them to the hearing examiner within an hour.
5. That the hearing examiner explained the Law 610 [sic] Section 213(a)(b) complaint to [sic] tenant.
6. That Mr. Young stated RACD had copies of all filings and the Landlord also had copies which were given to the hearing examiner.
7. That the Respondent provided the papers that RACD had on file, along with the Amended form and Rent Increase form.
8. That the Tenant misunderstood the rent increase law in Sections 205(g), 206(a)(b)(e) [sic], 207, and 208 of the Act, as they relate to the Amended Registration form.

The Housing Provider's prayer for relief in the motion to dismiss stated:

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[1] The Commission notes that the Housing Provider did not file a cross appeal and therefore, cannot belatedly raise appeal issues, after the period for filing an appeal expired. Smith v. Rental Accommodations Comm'n, 411 A.2d 612 (D.C. 1980).

[2] Id.

[3] Department of Consumer and Regulatory Affairs

[4] Rental Accommodations and Conversion Division, Department of Consumer and Regulatory Affairs

1. That the decision and order be affirmed, because the Housing Provider filed the proper form in a timely manner with RACD and the hearing examiner.
2. That the Commission dismiss the appeal, and stay order the order [sic] of facts and to consider all of the above.
3. That the Tenant has not paid rent to the Housing Provider for almost a year; that the Tenant's case has no merit; and that the appeal should be dismissed.
4. That the Housing Provider was not served with a copy of the appeal, which was faxed to the Housing Provider by the Commission.[5]

Motion to Dismiss at 1-2.

II. THE COMMISSION'S ORDER ON THE MOTION TO DISMISS

The Commission's review of the notice of appeal showed that the Tenant raised several issues related to errors in the rulings of the hearing examiner, as required by 14 DCMR § 3802.5. The motion to dismiss responded to some of the allegations of error by the Tenant in the notice of appeal. However, the motion was deficient, because it did not present substantial "record" evidence of the facts that supported the finding of a comparable vacancy rent increase for the Tenant's unit. Further, the Tenant challenged the documents submitted post hearing by the Housing Provider by questioning the hearing examiner's determination that she failed to respond to the post hearing submissions. See Tenant allegation number 4, p. 2, above. In her prayer for relief, the Tenant asserted that she has not received copies of the documents submitted post hearing and related to her rental unit, 301.

Finally, the Commission is charged with reviewing the complete record, including the testimony, for a determination of whether the Tenant and Housing Provider carried

[5] See n.1, where the Commission explained the Housing Provider did not file a cross appeal.

their respective burdens of proof with substantial evidence in the record. D.C. OFFICIAL CODE § 42-3502.16, 14 DCMR § 4003.1. The motion to dismiss the appeal did not address substantial record evidence, rather it conveyed allegations of the actions of Mr. Young in obtaining records on behalf of the Housing Provider for the hearing examiner, after the hearing ended. Those statements about Mr. Young's actions after the hearing was concluded cannot be considered in determining the motion to dismiss or the decision in this case, since those statements are outside of the record, or extra judicium.[6]

Under these facts, the Commission must carefully scrutinize the record to determine whether there was a violation of the rule against post hearing submissions of documents, Harris v. District of Columbia Rental Hous. Comm'n, 505 A.2d 66 (D.C. 1983), and whether the documents submitted post hearing were properly served on the Tenant, as required by 14 DCMR § 3911.1. The statements related to Mr. Young's actions did not show service on the Tenant of the documents submitted post hearing.

The Tenant also alleged that the hearing examiner knew one of the witnesses, Mr. Hood. She asserted that fact may have caused the adverse ruling of dismissal of her petition. The Commission must determine whether the Tenant objected in the record below, and moved for the disqualification of the hearing examiner, as required by 14 DCMR § 4001.

This appeal involves allegations of procedural irregularities, which should be carefully considered in rulings involving pro se litigants. Goodman v. District of Columbia Rental Hous. Comm'n., 575 A.2d 1293 (D.C. 1990).

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[6] Extra judicium is defined as "out of court; beyond the jurisdiction." See Blacks Law Dictionary, 526 (5th ed., 1976).

Accordingly, the Commission DENIES the motion to dismiss and will hear this case on June 4, 2002, at 2:00 p.m. in the Commission, as noticed on March 21, 2002.

SO ORDERED.

RUTH R. BANKS, CHAIRPERSON

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Order on Motion to Dismiss was served by postage prepaid priority mail with confirmation of delivery this **24th day of May, 2002** on:

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