

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,285

In re: 1521 Varnum Street, N.W.

Ward Four (4)

AEOLIAN JACKSON
Housing Provider/Appellant

v.

KIMBERLY JACKSON
Tenant/Appellee

DECISION AND ORDER

March 31, 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 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), also govern the proceedings.

I. PROCEDURAL HISTORY

Kimberly Jackson, who resides at 1521 Varnum Street, N.W., filed Tenant Petition (TP) 27,285 on August 31, 2001. In the petition, she alleged that the housing provider, Aeolian Jackson, directed retaliatory action against her. On November 5, 2001, the tenant filed an amended petition in which she alleged that the housing provider did not provide the services and facilities set forth in a voluntary agreement, and violated § 205(a) of the Act by improperly claiming a small housing provider exemption.

On April 10, 2002, Hearing Examiner Henry McCoy convened the hearing and identified the issues raised in the initial and amended petitions. The tenant appeared pro se, and the housing provider appeared with counsel, Stephen Hessler. Mr. Hessler argued that his client only received the petition filed on November 5, 2001. Mr. Hessler stated that neither he nor his client received the petition filed on August 31, 2001. Consequently, the housing provider did not have notice of the retaliation claim, and counsel was not prepared to defend the retaliation claim. Mr. Hessler requested notice and an opportunity to defend on another date. In addition, Mr. Hessler moved for a dismissal of the petition filed on November 5, 2001. He argued that the claim could not survive, because the housing provider was exempt from the rent stabilization provisions of the Act.

The hearing examiner took the motion to dismiss under advisement, provided a copy of the initial petition to the housing provider's attorney, and continued the hearing. On April 18, 2002, the housing provider's attorney filed a motion to dismiss the claims, which the tenant raised on November 5, 2001.

The hearing examiner reconvened the hearing on April 29, 2002. Before the hearing examiner received evidence, he permitted the housing provider's attorney to argue the motion to dismiss the claims raised on November 5, 2001, and he gave the tenant an opportunity to respond to the housing provider's argument. After the hearing examiner received the arguments, he held that the housing provider was exempt from the rent stabilization provisions of the Act, because she owned four or fewer rental units. Consequently, he dismissed the tenant's claim, that the housing provider violated § 205(a) of the Act. In addition, the hearing examiner dismissed the claim that the housing

provider did not provide services and facilities in accordance with the terms of a voluntary agreement. Once the hearing examiner granted the motion to dismiss the claims raised on November 5, 2001, the only remaining claim was the retaliation claim, which the tenant filed on August 31, 2001.

The tenant presented evidence on the claim of retaliation. Thereafter, the housing provider moved to dismiss the claim, arguing that the tenant failed to present evidence of retaliation. The housing provider argued that he was entitled to a ruling before providing a defense. After a lengthy argument and discussion, the hearing examiner stated that he would take the housing provider's motion to dismiss under advisement and conclude the proceedings for the day. The hearing examiner stated that he would reconvene the hearing if he denied the motion to dismiss the claim of retaliation. However, if he granted the motion to dismiss, that would conclude the matter.

When the hearing examiner issued his decision and order, he evaluated the evidence that the tenant presented on the claim of retaliation. The hearing examiner found that the tenant failed to meet her burden of proof, and he denied the tenant's claim of retaliation. However, contrary to his statement during the hearing, he did not conclude the matter after he dismissed the retaliation claim.

When the hearing examiner issued the decision and order, it contained a fourth claim, which was whether a notice to vacate served on the tenant violated the requirements of § 501 of the Act. See Jackson v. Jackson, TP 27,285 (OAD May 29, 2002) at 3. When the tenant completed the Miscellaneous Complaints section of the tenant petition form, she did not check the box for the allegation concerning the notice to vacate. However, in the text of the tenant petition, the tenant indicated that she received

“an eviction letter” from the housing provider on August 5, 2001, and “this eviction letter to all the tenants was not a 30 day notice.” Tenant Petition, Record at 10.¹

After identifying and evaluating the notice to vacate claim, the hearing examiner made the following finding of fact and conclusion of law.

On August 5, 2001,² Respondent informed Petitioner and her housemates by letter that the lease would not be renewed and they were to vacate the premises by August 31st.

Jackson at 4, Finding of Fact 6.

Respondent’s August 5, 2000 notice to vacate served on Petitioner and others violated the requirements of section 501 of the Act as codified at D.C. [OFFICIAL] CODE § 42-3505.01 [2001].

Id. at 7, Conclusion of Law 4. Finally, the hearing examiner ordered the housing provider to pay a fine in the amount of \$500.00 for serving a notice to vacate in violation of D.C. OFFICIAL CODE § 42-3505.01 (2001).

On June 17, 2002, the housing provider appealed the hearing examiner’s decision. On August 1, 2002, the Commission held the hearing on appeal.

II. ISSUES ON APPEAL

The housing provider, through counsel, raised the following issues in the notice of appeal.

1. The Hearing Examiner acted improperly as a matter of fact and as a matter of law and in contravention of well-established procedures of the Administrative Procedures [sic] Act by making a decision adverse to [sic] landlord without holding a hearing on the issue as to which [sic] Hearing Examiner issued an adverse decision.

¹ The housing provider did not allege that she did not have notice of the claim concerning the notice to vacate. Since the Commission’s review is limited to the issues raised in the notice of appeal, the Commission does not reach the issue of whether the discussion in the text of the petition placed the housing provider on notice of the claim concerning the notice to vacate.

² Attached to the tenant petition is a letter from Aeolian Jackson to Kimberly Jackson dated August 5, 2000.

2. Furthermore, the record demonstrates that the landlord never produced a defense case, but, rather, the proceedings were devoted entirely to a consideration of whether or not the tenant, at the conclusion of her case in chief, had, or had not, stated a claim under the Rental Housing Act. It was error as a matter of law and procedure for the hearing examiner to determine that the document dated August 2, 2000 (sic) [sic] constituted a "Notice to Vacate" (see Decision and Order at paragraph 2, page 6).
3. The hearing examiner committed error by determining that the August 5 letter is in fact a "Notice to Quit", [sic] and erred by inferring, without testimony from the landlord or landlord's witnesses, who were in attendance at the hearing, that the tenants were going to be evicted.
4. The Examiner erred by finding an ultimate fact adverse to Housing Provider that the August 5, 2000 letter was such a "Notice to Vacate", [sic] where Tenant Petitioner's own documents state that she never received an eviction notice.
5. The Hearing Examiner committed reversible error by finding that the August 5 letter was a "Notice to Vacate", [sic] in the absence of any testimony from Housing Provider's other witnesses, who were co-roommates in the premises, who would have testified that they did not regard such a letter as a Notice to Quit or eviction notice.
6. The Hearing Examiner erred as a matter of fact and as a matter of law by concluding that the August 5 letter was a "Notice to Quit", [sic] because in reality, it is uncontroverted that said August 5 letter simply memorializes a conversation and landlord's understanding, rather than constituting such a Notice to Quit.
7. The Hearing Examiner committed reversible error by determining at paragraph 4, page 7 that the August 5, 2000 notice violated the requirements of Section 501 of the Act as codified at D.C. Code Section 42-3505.01.
8. The Hearing Examiner erred by imposing a fine upon Housing Provider under these circumstances.

Notice of Appeal at 1-2.

III. DISCUSSION

A. Whether the hearing examiner acted improperly as a matter of fact and as a matter of law and in contravention of well-established procedures of the Administrative Procedure Act by making a decision adverse to the housing

provider without holding a hearing on the issue as to which the hearing examiner issued an adverse decision.

B. Whether the record demonstrates that the housing provider never produced a defense, but rather, the proceedings were devoted entirely to a consideration of whether the tenant, at the conclusion of her case in chief, stated a claim under the Rental Housing Act.

The District of Columbia Administrative Procedure Act 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." D.C. OFFICIAL CODE § 2-509(b) (2001). The regulation, 14 DCMR § 4000.2 (1991), requires the hearing examiner to conduct the hearing in accordance with the DCAPA procedures for contested cases.

The record reveals that the tenant presented evidence on the claim of retaliation. However, the housing provider did not present a defense to the tenant's claim. When the tenant concluded her case in chief, the housing provider's attorney moved to dismiss the tenant's claim. Counsel insisted that a ruling on the motion was needed before he presented the housing provider's defense.

The hearing examiner took the motion to dismiss under advisement and concluded the evidentiary hearing, without receiving the housing provider's defense or rebuttal from the tenant. The hearing examiner advised the parties that he would reconvene the hearing, if he did not grant the housing provider's motion to dismiss the tenant's retaliation claim. During the hearing, the hearing examiner stated the following:

In so far as I have already dismissed the two charges that fall under the rent stabilization act, if it is determined that the motion to dismiss also survives with regard to retaliatory action that will conclude this matter and there would be no need to continue further. If it is determined that it is my

ruling that the motion to dismiss is denied, I will set a new hearing date and make accommodations for the tape.

OAD Hearing Recording (Apr. 29, 2002).

The hearing examiner never reconvened the hearing. Instead, he issued a decision and order. The hearing examiner dismissed the retaliation claim. However, he found that the housing provider served the tenant with an improper notice to vacate, and the hearing examiner imposed a fine. Since the hearing examiner did not reconvene the hearing, before he issued the decision and order, he did not give the housing provider an opportunity to present a defense to the claim involving the notice to vacate.

“Notice and an opportunity to be heard at a meaningful time are fundamental elements of due process.” Jerome Mgmt. v. District of Columbia Rental Hous. Comm’n, 682 A.2d 178, 183 (D.C. 1996). When the hearing examiner issued the decision and order, before reconvening the hearing and permitting the housing provider to present a defense, the hearing examiner violated the express provisions of § 2-509(b), which embodies the mandates of due process.

The hearing examiner committed reversible error when he ruled upon a claim and issued an adverse decision, without holding a hearing in accordance with the DCAPA. Accordingly, the Commission reverses the hearing examiner’s decision concerning the notice to vacate and remands the matter to the hearing examiner with instructions to reconvene the hearing.

C. Whether the hearing examiner erred when he determined that the August 5th letter was in fact a notice to quit and inferred, without testimony from the housing provider’s witnesses, that the tenants were going to be evicted.

D. Whether the hearing examiner committed reversible error by finding that the August 5th letter was a notice to vacate, in the absence of any testimony from housing provider’s other witnesses, who were co-roommates in the

premises, who would have testified that they did not regard such a letter as a notice to quit or eviction notice.

The hearing examiner issued a decision and order, which contained an evaluation and analysis of the evidence, findings of fact, and conclusions of law concerning D.C. OFFICIAL CODE § 42-3505.01 (2001). In the decision, the hearing examiner ruled that the housing provider violated § 501 and ordered the housing provider to pay a fine of \$500.00 for serving an improper notice to vacate. However, the hearing examiner did not permit the housing provider to present evidence on the claim involving the notice to vacate.

Confronted with a similar set of facts in Davis v. BARAC Co., TP 24,835 (RHC Oct. 27, 2000), the Commission held that the hearing examiner deprived the opponent her right to a hearing in accordance with the DCAPA, when the hearing examiner issued a decision and order on a claim without permitting the opponent to present evidence on the claim. Similarly, in Thorpe v. Independence Federal Savings Bank, TP 24,271 (RHC Aug. 19, 1999), the Commission held that the hearing examiner committed reversible error when he issued a decision and order on a claim, but failed to permit the tenant to present evidence on the claim. Citing the DCAPA, § 1-1509(b), now codified at § 2-509(b), the Commission reversed and remanded the matter for an evidentiary hearing.

In accordance with the DCAPA, Davis, and Thorpe, the Commission reverses the decision and order as it relates to the notice to vacate and remands this matter to the hearing examiner. The hearing examiner is instructed to reconvene the hearing and permit the housing provider to present a defense on the claim concerning the notice to vacate.

E. Whether the hearing examiner erred by imposing a fine upon the housing provider under these circumstances.

The hearing examiner ordered the housing provider to pay a fine of \$500.00 for serving a notice to vacate in violation of D.C. OFFICIAL CODE § 42-3505.01 (2001). The hearing examiner erred when he imposed a fine, without permitting the housing provider to present a defense to the claim, which led to the fine. See discussion supra. Moreover, the hearing examiner erred when he failed to conduct an analysis of willfulness in accordance with D.C. OFFICIAL CODE § 42-3509.01(b) (2001).

Accordingly, the Commission vacates the fine.

F. Whether the hearing examiner erred by finding an ultimate fact adverse to housing provider that the August 5, 2000 letter was a notice to vacate, where the tenant petitioner's own documents state that she never received an eviction notice.

G. Whether the hearing examiner erred as a matter of fact and as a matter of law by concluding that the August 5 letter was a notice to quit, because in reality, it is uncontroverted that the August 5 letter simply memorializes a conversation and the housing provider's understanding, rather than constituting a notice to quit.

H. Whether the hearing examiner committed reversible error by determining at paragraph 4, page 7 that the August 5, 2000 notice to vacate violated the requirements of § 501 of the Act as codified at D.C. OFFICIAL CODE § 42-3505.01 (2001).

In the remaining issues, the housing provider alleges that the record does not support the hearing examiner's determination that the letter dated August 5, 2000 was a notice to vacate. The Act empowers the Commission to reverse a decision and order, which is not supported by substantial record evidence. D.C. OFFICIAL CODE § 42-3502.16(h) (2001). The Commission conducts its review, after each party presents a case or defense and the hearing examiner issues a decision and order, which is based upon evidence admitted in accordance with the DCAPA. In the instant case, the Commission

cannot make a ruling based upon the substantial record evidence, because the housing provider was not afforded an opportunity to defend. A decision based solely on the tenant's submission would be improper. The Commission cannot conduct a review of the record evidence, until the housing provider has an opportunity to present a defense.

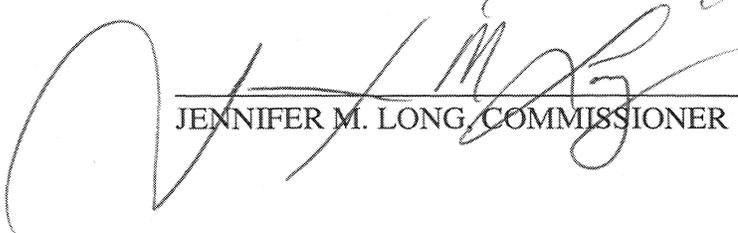
IV. CONCLUSION

For the foregoing reasons, the Commission reverses the hearing examiner's decision as it relates to the notice to vacate, and vacates the fine. This matter is remanded to enable the housing provider to present its defense to the tenant's allegation concerning a notice to vacate.

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON


RONALD A. YOUNG, COMMISSIONER

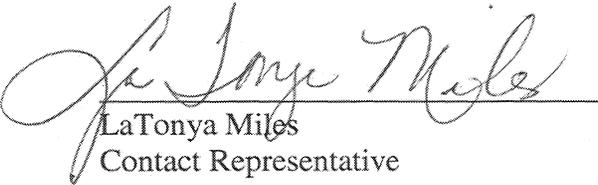

JENNIFER M. LONG, COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Decision and Order in TP 27,285 was sent by priority mail with delivery confirmation, postage prepaid, this 31st day of March 2003 to:

Stephen O. Hessler, Esquire
729 15th Street, N.W.
Suite 200
Washington, D.C. 20005

Kimberly Jackson
1521 Varnum Street, N.W.
Washington, D.C. 20011



LaTonya Miles
Contact Representative