DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,344

In re: 1733 Lanier Place, N.W.

1773 LANIER PLACE, N.W. TENANT'S ASSOCIATION, INC.
Tenant/Appellant

v.

LAURENCE DRELL/BRUCE ROWNAGHI LANIER ASSOCIATES
Housing Provider/Appellee

ORDER ON MOTION FOR REMAND

April 18, 2003

BANKS, CHAIRPERSON. This case is on appeal to the Rental Housing Commission from a decision and order issued by the Rent Administrator, based on a petition filed in the Rental Accommodations and Conversion Division (RACD). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, 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 November 5, 2001, the 1773 Lanier Place Tenants' Association, Inc. filed a tenant petition in the Housing Regulation Administration. The tenant petition alleged: 1) rent increases larger than allowed by the Act, 2) failure to provide a proper 30-day notice of rent increase, 3) failure to file proper rent increase forms with RACD, 4) the rent charged exceeded the rent ceiling, 5) improper rent ceilings filed in RACD, 6) rental units

with rent increases while not in compliance with the housing code, 7) services and facilities reduced and eliminated, 8) retaliatory action, 9) service of improper notices to vacate, and 10) the Housing Provider violated the Act.

Administrative Law Judge (ALJ) Henry McCoy held hearings on June 4, 17, and 26, 2002; July 24 and 31, 2002; and August 1 and 2, 2002. On October 1, 2002, the ALJ issued the decision and order.

On October 21, 2002, the Tenants filed a motion for reconsideration. The certified file does not contain an order on that motion, therefore it was deemed denied.[1] Also, on October 21, 2002, the Tenants filed a notice of appeal with the following allegations of error in the decision and order.

1. That the hearing examiner committed plain error (or alternatively, abused his discretion) in failing to award trebled rent refunds (reflecting the amount of the illegal rent increase demands specifically assessed against each unit at issue) to petitioners for the entirety of the period from March 2001 through August of 2002;

2. That the hearing examiner committed plain errors of law and fact by consolidating the code violations cited by numerous Housing Deficiency Notices, fire inspection notices, and/or asserted through testimonial and photographic evidence into an across-the board $50.00 per month rent reduction for all tenants when the law requires that each violation be considered separately; and the circumstances pertaining to some units and common areas were markedly more severe than in others;

3. That the hearing examiner committed plain errors of fact and law (or alternatively, abused his discretion) when he ruled that Petitioner failed to meet its burden of proof to show that Respondent failed to file the proper rent increase forms when those forms as filed were defective, erroneous and/or unsubstantiated.

4. That the hearing examiner committed plain errors of fact and law (or alternatively, abused his discretion) when he ruled that Petitioner failed to meet its burden of proof to show that Respondent failed to file the proper rent

[1] Pursuant to 14 DCMR § 4013.5 (1991), a motion for reconsideration is deemed denied upon the failure to act on it.

increase forms when those forms as filed were defective, erroneous and/or and unsubstantiated;

5. That the hearing examiner committed plain errors of fact and law (or alternatively abused his discretion) when he ruled that Petitioner failed to meet its burden of proof to show that the rent charged for tenant's (sic) rental units exceeded the legally calculated rent ceiling (sic) for the rental units;

6. That the hearing examiner committed plain errors of fact and law (or alternatively abused his discretion) when he ruled that Petitioner failed to meet its burden of proof to show that the rent ceilings filed with the Rental Accommodations and Conversion Division were improper;

7. That the hearing examiner committed plain errors of fact and law (or alternatively, abused his discretion) when he failed to take the into account his own findings regarding whether tenants were even informed as to their rent ceilings when he ruled that Petitioner failed to meet its burden of proof to show that the rent ceilings filed with the Rental Accommodations and Conversion Division were improper;

...

8. That the examiner committed plain error of law (or alternatively, abused his discretion) in that the decision does not contain findings as to the illegal rent increases that were assessed against rental unit # 9 and accordingly award appropriate rent refunds to the tenant.

Notice of Appeal at 1 & 2, (emphasis added).

On November 8, 2002, the Commission issued an order denying the Housing Provider's motion for a stay.

On December 12, 2002, the Tenants filed, "Petitioner's Memorandum in Support of the Notice of Appeal From the Rent Administrator's Decision and Order Dated October 1, 2002," and on February 5, 2003, the Tenants filed a motion to amend the Memorandum. The Commission held its hearing on February 13, 2003, and as a preliminary matter raised the issue of the Tenants filing the motion five (5) business days prior to the hearing. That did not give the Housing Provider the opportunity to oppose the motion. Pursuant to the Commission's rules, 14 DCMR § 3814.3 (1991), which

provides five (5) days for an opposition, and 14 DCMR § 3816.3 & .5, (1991) which provide for exclusion of non business days and three extra days for mail service, the time period for the Housing Provider to file an opposition did not expire until February 18, 2003. The Commission ruled that at the hearing the Tenants' counsel could not argue any issue raised in the motion, because the time had not expired for the Housing Provider to file an opposition to the motion. As of the date of this order, the Housing Provider has not filed an opposition, although the Commission allowed more than the required time for filing the opposition.

The motion stated that five allegations of error in the notice of appeal in paragraphs numbered 3, 4, 5, 6, and 7 are interrelated and are the Tenants' challenges to the Housing Provider's rent ceilings.

The Tenant's motion further stated:

> Petitioners ... located the evidence that they sought. It consists of a Certificate of Election of Adjustment of General Applicability, date stamped as filed with the Department of Consumer and Regulatory Affairs Housing Regulation Administration on March 19, 1999 (attached as Exhibit A). This filing sets forth rent ceilings for many of the units at issue in the current matter that are considerably lower than those established by the 1992 rent ceilings relied upon by the housing provider in asserting rent ceilings for the subject units. The Administrative Law Judge (ALJ) used the 1992 rent ceilings asserted by the housing provider to establish the rent ceilings for the subject units set forth in Attachment B of his October 2002 Decision and Order.
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> ...
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> The ALJ on page 11 of the Decision and Order, took notice of the "DCRA records on 1773 Lanier Place, N.W. as Exhibit #152." Petitioners are unaware of the circumstances that led to the 1999 rent filing being absent from those records.
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> ...
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> The date stamp on this document clearly indicates DCRA's receipt of the filing and therefore that it was, at one point, a part of the DCRA files on 1773 Lanier Place, or at least that it certainly should have been.

> Petitioners assert that this document, as part of the DCRA files, should have been considered by the ALJ in his Decision and Order. That he was unable to do so, and that Petitioners have been unable to produce it until this time due to its being somehow lost from those files, is not the fault of Petitioners, and should not prejudice their position in this matter. They therefore respectfully assert that the ALJ's findings as to the rent ceilings in the current matter are erroneous, as they failed to take in to account the 1999 filing by the housing provider, and request that this matter be remanded to the ALJ for appropriate consideration.

Motion at 2-3.

The Tenants argued that the agency had a duty to keep the 1999 rent ceiling record, but did not, and cited D.C. Official Code § 1-1509(c) and Jerome Mgmt. v. District of Columbia Rental Hous. Comm'n, 682 A.2d 178 (D.C. 1996). The Tenants also rely on 14 DCMR § 4017.1 (1991) for remand to the Rent Administrator for consideration of the newly discovered document, the 1999 Amended Registration Form that contains rent ceilings.

II. THE COMMISSION'S ORDER

The ALJ stated at least twice in the decision and order that he considered filings that were the records of the agency. First, under "Summary of the Evidence" at ¶ 4 & ¶ 5c, the ALJ stated that he took official notice of RACD stamped registration filings for the subject property submitted by the parties at the hearing. (Decision at 4). Second, as noted by the Tenants in their motion, the ALJ wrote under "General Exhibits," "Exhibit #152 DCRA records on 1773 Lanier Place, N.W."[2] (Decision at 11). The Commission's review of Exh. 152 showed that it consisted of several DCRA documents, and two of them were Amended Registration Forms date stamped in 2001 and 2002. The Tenants are seeking to introduce as evidence an Amended Registration Form for 1999, which is

[2] Exhibit 152 was evidence submitted by the parties, not documents officially noticed pursuant to D.C. OFFICIAL CODE § 2-509(b) (2001).

within the statute of limitations period for the Tenants' petition filed on November 5, 2001.[3] They allege the 1999 Amended Registration Form was missing from the agency records and that caused error in the decision and order rendered by the ALJ.

The central issue in the motion is whether to remand this appeal to the ALJ for consideration of the 1999 Amended Registration Form that the Tenants assert was missing from the agency records. As noted by the Tenants, the agency has a duty to keep accurate records. See Jerome, supra. However, the Tenants asserted in the motion that the relevant 1999 filing, an Amended Registration Form, was missing from the agency's records and that a stranger to the litigation, not the Tenants, had the missing 1999 Amended Registration Form, which was filed in the agency in 1999.

The Tenants appropriately cited 14 DCMR § 4017.1 (1991) as the proper rule under which the ALJ may consider whether the 1999 Amended Registration Form is newly discovered evidence, which should be considered for determining the proper rent ceilings and rents. See Webb v. Joyce, TP 20,720 (RHC Mar. 4, 1991) (where the Commission pursuant to 14 DCMR § 4017.1 (1991) remanded to OAD an issue related to failure of counsel to receive an order.) Here the agency failed to keep accurate records and that failure may have caused error(s) in the decision and order. The Commission noted that counsel for the Tenants identified five issues, numbered 3, 4, 5, 6, and 7, that are interrelated on the issue of proper rent ceilings and rents. However, the Commission's review of the issues in the notice of appeal show that seven (7) of the eight (8) issues in the notice of appeal relate to rent ceilings, or rents, or refund of overpaid rents.[4]

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[3] A Tenant may challenge a rent ceiling or rent adjustment within three years of its effective date. D.C. OFFICIAL CODE § 42-3502.06 (2001).

[4] See underlined parts of each issue listed on pages 2 & 3, supra.

Accordingly, the issue of the admissibility of the 1999 Amended Registration Form is related to rent ceilings, rents, and refunds. Therefore, the motion to remand is GRANTED for a hearing only on the issue of admissibility of the 1999 Amended Registration Form under 14 DCMR § 4017.1 (1991). If the ALJ determines it is admissible, then he must determine whether to amend the October 1, 2002 decision and order.

SO ORDERED.

RUTH R. BANKS, CHAIRPERSON

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Order on Motion for Remand in TP 27,344 was mailed by priority mail, with confirmation of delivery, postage prepaid this **18th day of April, 2003**, to:

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