

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,665

In re: 5037 Call Place, S.E.

Ward Seven (7)

KATHY DANIEL
Housing Provider/Appellant

v.

NICOLE THOMAS
Tenant/Appelle

ORDER ON MOTION FOR RECONSIDERATION

July 20, 2004

PER CURIAM. This matter is before the District of Columbia Rental Housing Commission (Commission) 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 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 BACKGROUND

On June 18, 2004, the Commission issued a decision and order in the above-captioned appeal. On June 25, 2004, the housing provider, Kathy Daniel filed a motion for reconsideration of the Commission's decision and order.

In Thomas v. Daniel, TP 27,665 (RHC June 18, 2004), the Commission reversed and remanded the decision of the hearing examiner in Thomas v. Daniel, TP 27,665 (OAD June 16, 2003). The Commission held that the hearing examiner erred when he

failed to grant the tenant a rent refund despite his finding that the housing provider demanded or received rent for the tenant's rental unit in excess of the maximum allowable rent applicable to the rental unit in violation of D.C. OFFICIAL CODE § 42-3509.01(a) (2001).¹ The Commission also held that the hearing examiner, after determining that the evidence in the record supported a finding of bad faith by the housing provider, was required to grant an award of treble damages. Accordingly, the Commission remanded the case to the Rent Administrator for calculation of the trebled rent refund due the tenant, plus interest, as a result of the housing provider's demand for rent in excess of the maximum allowable rent applicable to the tenant's rental unit. See Kapusta v. District of Columbia Rental Hous. Comm'n, 704 A.2d 286 (D.C. 1997) (holding that statutory damages are triggered by the mere demand for excess rent as there is no requirement of proof that the excess rent was actually collected); Temple v. District of Columbia Rental Hous. Comm'n, 536 A.2d 1024, 1025 (D.C. 1987) (ordering refund, though only one third of the rent had been collected); Afshar v. District of Columbia Rental Hous. Comm'n, 504 A.2d 1105, 1108 (D.C. 1986) (concluding that "a landlord who even demands rent in excess of the established ceiling will be liable for either treble the excess, ... a rollback of the rent, or both").

II. MOTION FOR RECONSIDERATION

In her Motion for Reconsideration filed on June 25, 2004, the housing provider argues:

Refunds of rent shall not be trebled under § 4210.1 unless the surrounding circumstances indicate that the housing provider acted in bad faith. The issue

¹ When read with the definition of rent, the Act commands that a violator "shall be liable... for the amount by which the rent ('entire amount of money... demanded, received or charged') exceeds the applicable rent ceiling...." D.C. OFFICIAL CODE §§ 42-3501.03(28), 3509.01(a) (2001).

presented for appeal was narrow. The housing provider may be liable for the amount by which the rent exceeds the applicable rent ceiling. There is nothing in the record that indicates that the housing provider acted in "Bad Faith" under the circumstances.

Motion for Reconsideration at 1.

III. DISCUSSION OF THE ISSUE IN THE MOTION

The Commission had initiated review on the issue of:

Whether the hearing examiner erred when he failed to grant the tenant a rent refund after finding that the housing provider demanded or received rent for the tenant's rental unit in excess of the maximum allowable rent applicable to the rental unit in violation of D.C. OFFICIAL CODE § 42-3509.01(a) (2001).

Notice of Commission Initiated Review (RHC July 22, 2003) at 2. In the current case, not only was the housing provider found to have demanded rent for the tenant's rental unit in excess of the maximum allowable rent applicable to the rental unit, but the hearing examiner also found that the housing provider acted in "bad faith."

After a careful evaluation of the evidence and legal analysis the Examiner finds....

4. The Respondent demanded a rent of \$950.00 from Petitioner.
5. The Petitioner's rent charged should have been \$568.00....
7. The Respondent acted in bad faith when she illegally charged Petitioner a rent higher than the rent ceiling on her unit....

Thomas v. Daniel, TP 27,665 (OAD Jun. 16, 2003) at 6-7. The above findings of fact require that the hearing examiner calculate and order a trebled rent refund to the tenant, plus interest. See Temple, 536 A.2d at 1037 (noting that treble damages have often been imposed for failure to comply with the registration requirement); Yasuna v. District of Columbia Rental Hous. Comm'n, 504 A.2d 605 (D.C. 1986); Third Jones Corp. v. Young, TP 20,300 (RHC Mar. 22, 1990).

The housing provider challenges Finding of Fact number seven (7) concerning the issue of bad faith. The Commission's decision and order which directs the hearing

examiner to calculate and order a trebled rent refund to the tenant is based on the hearing examiner's finding of bad faith in the case. The Hearing Examiner, Carl Bradford issued a decision and order which made the finding of fact, "[t]he Respondent acted in bad faith when she illegally charged Petitioner a rent higher than the rent ceiling on her unit."

Daniel, TP 27,665 (OAD) at 7. The housing provider claims in her motion for reconsideration that "[t]here is nothing in the record that indicates that the housing provider acted in 'Bad Faith' under the circumstances." While the Commission is empowered to reverse a hearing examiner's decision if it is not supported by substantial evidence, see D.C. OFFICIAL CODE § 45-3502.16(h) (2001)² the Commission may not address an issue not raised in a notice of appeal nor in a Commission initiated review. 14 DCMR § 3807.4 (1991);³ see also Tenants of 329 Rhode Island Ave., N.E. v. Auxier, HP 10,702 (RHC Dec. 1, 1988).

The last line of the Commission's stated issue for initiated review cited to the Act, D.C. OFFICIAL CODE § 42-3509.01(a) (2001), which has text that refers to "bad faith" and "treble damages." The housing provider was, therefore, placed on notice that the Commission would consider whether or not the tenant should be awarded a trebled rent refund. The Commission has determined that trebled damages should be awarded based

² D.C. OFFICIAL CODE § 45-3502.16(h) provides that:

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 provision of this chapter, or unsupported by the 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.

³ "Review by the Commission shall be limited to the issues raised in the notice of appeal; Provided, that the Commission may correct plain error."

on the hearing examiner's findings and the Act.⁴ The Commission, however, may not determine whether there is sufficient evidence on the record to support a finding of "bad faith" as this issue was not raised in a notice of appeal by the housing provider.

The Act, D.C. OFFICIAL CODE § 42-3502.16(h) (2001)⁵ provides that appeals may be made to the Commission from the decisions of the Rent Administrator within ten (10) days of the Rent Administrator's decision. See also 14 DCMR § 3802.2 (1991).⁶ The hearing examiner's decision and order also stated that appeals were to be filed no later than July 3, 2003. See Daniel, TP 27,665 (OAD June 16, 2003) at 8. The Commission is required by law to dismiss appeals that are untimely filed, because time limits are mandatory and jurisdictional. United States v. Robinson, 361 U.S. 209 (1960); Hija Lee Yu v. District of Columbia Rental Hous. Comm'n, 505 A.2d 1310 (D.C. 1986); Totz v. District of Columbia Rental Hous. Comm'n, 474 A.2d 827 (D.C. 1974); cited in The New Capitol Park Twin Towers Tenants v. American Rental Mgmt. Co., TP 27,926

⁴ The penalty provision of the Act, clearly states in pertinent part:

Any person who knowingly (1) demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of subchapter II of this chapter, ... shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent ceiling or for treble that amount (in the event of bad faith) and/or for a roll back of the rent to the amount the Rent Administrator or Rental Housing Commission determines.

D.C. OFFICIAL CODE § 42-3509.01(a) (2001) (emphasis added). Therefore, the hearing examiner, after determining that the evidence in the record supported a finding of bad faith by the housing provider, is required to grant an award of treble damages. See Temple, 536 A.2d at 1037; Yasuna v. District of Columbia Rental Hous. Comm'n, 504 A.2d 605 (D.C.1986); Third Jones Corp. v. Young, TP 20,300 (RHC Mar. 22, 1990).

⁵ "An appeal from any decision of the Rent Administrator may be taken by the aggrieved party to the Rental Housing Commission within 10 days after the decision of the Rent Administrator."

⁶ "A notice of appeal shall be filed by the aggrieved party within (10) days after a final decision of the Rent Administrator is issued; and if the decision is served by mail an additional three (3) days shall be allowed."

(RHC Jan. 23, 2004), Camp v. Ghani, TP 27,533 (RHC Jan. 27, 2003), and Jassiem v. The Jonathan Woodner Co., TP 27,348 (RHC June 24, 2002). The Commission determines the time period between the issuance of the OAD decision and the filing of notice of appeal by counting only business days, as required by the regulation. See 14 DCMR § 3816.3 (1991);⁷ Town Center Mgt. v. District of Columbia Rental Hous. Comm'n, 496 A.2d 264 (D.C. 1985).

In this appeal, the thirteen (13) day period for the housing provider to file a notice of appeal commenced on June 17, 2003, which was the first business day after the hearing examiner's decision and order was issued and served by priority mail. The thirteen (13) business day period provided in regulation, 14 DCMR § 3802.5,⁸ ended on July 3, 2003. The housing provider, after failing to appeal the Hearing Examiner's finding of bad faith, cannot now raise the issue of bad faith in a motion for reconsideration.

Accordingly, the issue of bad faith raised by the housing provider in the motion for reconsideration, is dismissed as an untimely appeal.

⁷ "When the time period is ten (10) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation."

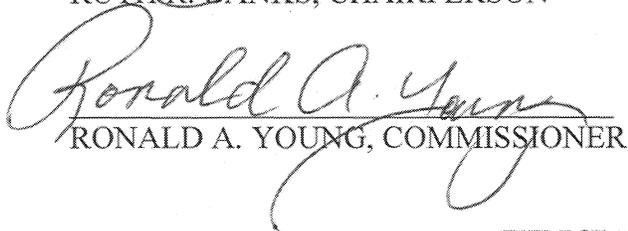
⁸ "If a party is required to serve papers within a prescribed period and does so by mail, (3) days shall be added to the prescribed period to permit reasonable time for mail delivery."

IV. CONCLUSION

The housing provider failed to timely appeal the hearing examiner's finding of bad faith. Accordingly, the issue raised for the first time in the motion for reconsideration is denied.

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON


RONALD A. YOUNG, COMMISSIONER

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), “[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals.” Petitions for review of the Commission’s decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The Court’s Rule, D.C. App. R. 15(a), provides in part: “Review of orders and decisions of an agency shall be obtained by filing with the clerk of this court a petition for review within thirty days after notice is given, in conformance with the rules or regulations of the agency, of the order or decision sought to be reviewed ... and by tendering the prescribed docketing fee to the clerk.” The Court may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk
500 Indiana Avenue, N.W., 6th Floor
Washington, D.C. 20001
(202) 879-2700

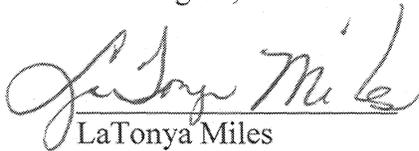
CERTIFICATE OF SERVICE

I certify that a copy of the Order on Motion for Reconsideration in TP 27,665 was mailed postage prepaid by priority mail, with delivery confirmation, on this 20th day of July, to the following persons:

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