

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,730

In re: 3636 16th Street, N.W., Unit B-1066

Ward One (1)

JONATHAN WOODNER COMPANY
Housing Provider/Appellant

v.

HELEN ENOBAKHARE
Tenant/Appellee

ORDER ON MOTION FOR SUBPOENA

September 22, 2003

BANKS, CHAIRPERSON. Helen Enobakhare, Tenant, filed tenant petition (TP) 27,730 on January 17, 2003. The decision and order was issued on July 8, 2003. On July 24, 2003, the Jonathan Woodner Company, the Housing Provider, filed a notice of appeal. On July 31, 2003, the Commission scheduled this case for hearing for September 24, 2003. On September 9, 2003, the Tenant filed a motion for issuance of a subpoena. Pursuant to 14 DCMR § 3814.3; 3816.3 (1991), an opposition was due within five business days, no later than Friday, September 19, 2003. The Housing Provider did not file an opposition by close of business on Wednesday, September 17, 2003. However, the District and federal governments were closed on Thursday and Friday, September 18 and 19, 2003, due to hurricane Isabel's scheduled arrival on Thursday, September 18, 2003. No opposition was filed on Monday, September 22, 2003. Accordingly, the Commission issues this order, since the hearing is scheduled for Wednesday, September 24, 2003.

THE COMMISSION'S ORDER

There are two issues before the Commission. The first is what is the Commission's authority to issue a subpoena? The second issue is whether to issue a subpoena on the Tenant's request for a subpoena to obtain Housing Provider records, which were not produced at the hearing by the Housing Provider which claimed all records related to the Tenant's rental unit were produced at the hearing.

The Commission reviewed the law and its authority over subpoenas in Reid v. Sinclair, TP 11,334 (RHC Jan. 12, 1999), where the Commission stated:

The Commission is an appeals and review agency. Meier v. District of Columbia Rental Housing Commission, 372 A.2d 566 (D.C. 1977). The "review of the Commission is limited to issues raised in the notice of appeal...." 14 DCMR 3807.4. 'The Commission shall not receive new evidence on appeal.' 14 DCMR 3807.5.

The regulation, 14 DCMR 3817 states:

Any party to an appeal may file a motion with the Commission requesting the issuance of a subpoena requiring the production of documents or the attendance and testimony of witnesses, or a subpoena may be issued by the Commission on its own initiative.

This regulation must be read with the section in the Act, which grants subpoena power to the Commission, D. C. Code § 45-2512(b)(1),¹ which states:

The Rental Housing Commission may hold hearings, sit and act at times and places within the District, administer oaths, and require by subpoena or other wise the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents as the Rental Housing Commission may consider advisable in carrying out its functions under this chapter. (emphasis added.)

¹ Now D.C. OFFICIAL CODE § 42-3502.02(b)(1) (2001).

Id. at 3 & 4.

The one of the Commission's duties is the review of issues raised on appeal, D.C. OFFICIAL CODE § 42-3502.02(a)(2) (2001), and in conjunction with that duty to issue subpoenas to carry out its functions (of review) under the Rental Housing Act of 1985, D.C. OFFICIAL CODE § 42-3502.02(b)(1) (2001). In the instant appeal, the Tenant did not raise the alleged errors related to reviewing or obtaining the Housing Provider's documents in a notice of appeal filed in the Commission. Instead, in the Housing Provider's appeal, the Tenant alleges in the instant motion for a subpoena that documents were presented by the Housing Provider at the hearing, and that she did not have time to review them and cross examine the witness, who produced the documents. After the hearing, the Tenant determined that key reports were missing, and attempted to get a subpoena for all of the Location Observation Reports (records) related to her unit, however, her requests were denied by the Housing Provider and the agency, because the requests were after the hearing.

The Tenant's issue about subpoenas should have been timely presented to the Commission in a notice of appeal within ten (10) days after receipt of the decision and order. D.C. OFFICIAL CODE § 42-3502.16(h) (2001); 14 DCMR § 3802.1-.2 (1991). Since the Tenant is not the appealing party, she cannot raise issues for the Commission to review, because that would enlarge the ten day rule for filing a notice of appeal. The Commission cannot enlarge the time to file a notice of appeal, 14 DCMR § 3816.6 (1991). 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). The Commission determines the time period between the issuance of the OAD decision and the filing of the notice of appeal by counting only business days, as required by its rules. See 14 DCMR § 3802.2 (1991); Town Center v. District of Columbia Rental Hous. Comm'n, 496 A.2d 264 (D.C. 1985). In the instant appeal, since the decision and order was issued on July 8, 2003, the ten business days time period (plus three (3) business days for mailing, 14 DCMR § 3816.5 (1991), for a total of 13 business days), expired on July 25, 2003 for filing a notice of appeal in the Commission with alleged errors related to documents and subpoenas at the hearing. The Tenant did not file the motion until September 9, 2003, which is after the time expired to raise issues on appeal in the Commission. Therefore, the Tenant's motion for subpoena is denied.

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing ORDER ON MOTION FOR SUBPOENA in TP 27,730 was mailed by priority mail, with confirmation of delivery, postage prepaid, this **22nd day of September 2003**, to:

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