

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,859

In re: 2204 Prout Street, S.E., Units 1, 3, 4

Ward Eight (8)

SILVANIA GARCES
SHIRLENE MASSEY
SANTRESA SMITH
Tenants/Appellants

v.

NOLAN GRAVES/NO GRAVES PROPERTIES
VALTRICE PARKER
Housing Providers/Appellees

DECISION AND ORDER

September 28, 2005

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 (2004), govern the proceedings.

I. THE PROCEDURES

On May 22, 2003, Shirlene Masey, Santresa Smith, and Sylvania Graces, Tenants, filed Tenant Petition (TP) 27,859 in the Housing Regulation Administration (HRA). The petition alleged: 1) the rent increase was larger than the amount of increase allowed by any provision of the Rental Housing Act of 1985, 2) a proper thirty (30) day notice of rent increase was not provided before the rent

increase became effective, 3) the Housing Provider failed to file the proper rent increase forms with RACD, 4) the rent being charged exceeds the legally calculated rent ceiling for our units, 5) a rent increase was taken while the units were not in substantial compliance with the D.C. Housing Regulations, 6) the rents were increased while a written lease, prohibiting such increase, was in effect, 7) the building in which our rental units are located is not properly registered with RACD, 8) services and facilities provided in connection with the rental of our units have been permanently eliminated, 9) services and facilities provided in connection with the rental of our units have been substantially reduced, 10) a security deposit was demanded after the date on which we moved into the rental unit, where no security deposit had been demanded or received before, 11) retaliatory action has been directed against us by our Housing Provider, manager or other agent for exercising our rights in violation of section 502 of the Rental Housing Act of 1985, and 12) the Housing Provider, manager or other agent of the Housing Provider of our units have violated the provisions of the Rental Housing Act of 1985 related to late fees.

Hearing Examiner Carl Bradford held the hearing on September 8, 2003 and he issued the decision and order on January 23, 2004, with notice to the parties to file motions for reconsideration and appeals no later than February 11, 2004. On February 11, 2004, Robert Cooper, counsel for the Tenants, filed a motion for reconsideration of the decision. The certified record contains an order dated February 27, 2004, denying the motion for reconsideration filed by counsel for the Tenants. Pursuant to the Rent Administrator's rule, 14 DCMR § 4013.2 & .5 (2004), the motion for reconsideration must be "granted or denied in writing by the hearing examiner within ten (10) days after receipt..." or the "[f]ailure of a hearing examiner to act on a motion for reconsideration within the time limit prescribed by § 4013.2 shall constitute a denial of the motion for reconsideration." The ten (10) day period expired on February 26, 2004, one day before the hearing examiner issued the

order denying the motion for reconsideration. Record (R.) at 110. At this point the motion was denied twice, once by operation of law and second by order of the hearing examiner.

On March 8, 2004, the hearing examiner issued an amended order on reconsideration of the original order denying reconsideration dated February 27, 2004. There is no motion in the certified file that requested the hearing examiner to amend his original order on reconsideration.¹ On the next day, March 9, 2004, the hearing examiner issued an amended decision and order. It stated notices of appeal should be filed no later than March 26, 2004. Two days later, on March 11, 2004, counsel for the Tenants filed a notice of appeal in the Commission. This was ten (10) business days from February 26, 2004, when the motion was denied by operation of law. The notice of appeal stated it was an appeal from the decision and order issued on January 23, 2004, rather than the amended decision and order issued on March 9, 2004.

II. THE ISSUES

A. Preliminary Issue

Whether a notice of appeal was timely filed in the Commission from the amended decision and order.

B. Issues raised in the Tenants' notice of appeal follow:

1. Whether the hearing examiner committed error when he disregarded the clear, convincing and uncontested testimony and evidence of the deplorable condition of the rental units.
2. Whether the hearing examiner committed error when he disregarded the clear, convincing and uncontested testimony and evidence that the rent increases that were taken while their units were not in substantial compliance with the Housing Code.
3. Whether the hearing examiner committed error when he disregarded the clear, convincing and uncontested testimony and evidence that the conditions in the rental units were a substantial reduction in the services and facilities to which they were paying rent and that one of the Housing Providers (Noland Graves) was put

¹ The Rent Administrator's rule, 14 DCMR § 4013.3, states, "[t]he denial of a motion for reconsideration shall not be subject to reconsideration or appeal."

on notice of the conditions and need for repairs.

4. Whether the hearing examiner committed error when he disregarded the clear, convincing and uncontested testimony and evidence when he failed to award any damages to the Tenants by way of rent refunds or rent reductions.
5. Whether the hearing examiner committed error when he found that the Housing Providers were not registered with the DCRA as exempt or otherwise, and fined them for that failure. However, he failed and/or refused to award any damages to the Tenants.
6. Whether the hearing examiner committed error when he was inconsistent in his ruling regarding the issue of retaliation. The Tenants presented substantial evidence that the Housing Providers retaliated against them and further reduced and eliminated services and facilities, by failing to correct the electrical service outage. The examiner agreed with the Tenants' claims, then later disagreed that there was retaliatory action directed towards them, then ruled that there was retaliation, but failed and/or refused to award any damages.
7. Whether the hearing examiner committed error when he placed upon the Tenants the prejudicial and burdensome obligation to present Housing Inspection reports and dismissed their overwhelming evidence and testimony of the condition of the premises; and refused to award them any damages despite finding that the premises were not in compliance.
8. Whether the hearing examiner committed error when he concluded that the Housing Providers acted in bad faith due to the fact that they "knowingly" engaged in activities that violated the Act, and fined them, but failed to award any damages to the Tenants.
9. Whether the hearing examiner committed error when he failed to address and resolve the issue of whether the rent increase was larger than the amount of increase allowed by any provision of the Rental Housing Act of 1985.
10. Whether the hearing examiner committed error when he failed to address and resolve the issue of whether a proper thirty (30) day notice of rent increase was provided before the rent increase became effective.
11. Whether the hearing examiner committed error when he failed to address and resolve the issue of whether the Housing Providers failed to file the proper rent increase forms with the Rental Accommodations and Conversion Division.
12. Whether the rents being charged exceed the legally calculated rent ceiling for the units.
13. Whether the hearing examiner committed error when he failed to address and

resolve the issue of whether a rent increase was taken while the units were not in substantial compliance with the D.C. Housing Regulations.

14. Whether the hearing examiner committed error when he failed to address and resolve the issue of whether services and facilities provided in connection with the Tenants' units have been substantially reduced.
15. Whether the hearing examiner committed error when he failed to address and resolve the issue of whether a security deposit was demanded after the date the Tenants moved into the premises where no security deposits had been demanded or received.
16. Whether the hearing examiner committed error when he failed to address and resolve the issue of whether retaliatory action had been directed against the Tenants by the Housing Provider/Respondents, manager or other agent for exercising the Tenants' rights in violation of section 502 of the Rental Housing Act of 1985.

Notice of Appeal at 2-3.

III. THE LAW ON THE PRELIMINARY ISSUE

The Rental Housing Act of 1985 provides that an appeal may be made to the Commission from the decision of the Rent Administrator within ten (10) days of the Rent Administrator's decision. D.C. OFFICIAL CODE § 42-3502.16(h) (2001).

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. Dist. of Columbia Rental Hous. Comm'n, 505 A.2d 1310 (D.C. 1986); Totz v. Dist. of Columbia Rental Hous. Comm'n, 474 A.2d 827 (D.C. 1974). The Commission determines the time period between the issuance of the Rent Administrator's decision and the filing of the notice of appeal or motion for reconsideration by counting only business days, as required by its rules. See 14 DCMR § 3802.2 (2004); Town Center v. Dist. of Columbia Rental Hous. Comm'n, 496 A.2d 264 (D.C. 1985).

The Commission's rules state:

No pleading or other documents shall be deemed filed until actually received at the Commission's office and compliance with time requirements shall be calculated from the date of actual receipt.

14 DCMR § 3801.2 (2004).

A notice of appeal shall be filed by the aggrieved party within ten (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.

14 DCMR § 3802.2 (2004).

The filing of a notice of appeal removes jurisdiction over the matter from the Rent Administrator; Provided that if both a timely motion for reconsideration and a timely notice of appeal are filed with respect to the same decision, the Rent Administrator shall retain jurisdiction over the matter solely for the purpose of deciding the motion for reconsideration, and the Commission's jurisdiction with respect to the notice of appeal shall take effect at the end of the ten (10) day period provided by §4014.

14 DCMR § 3802.3 (2004).

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

14 DCMR § 3816.3 (2004).

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

14 DCMR § 3816.5 (2004).

In this appeal, the thirteen (13) business day time period for filing a notice of appeal in the Commission, from the amended decision, commenced on March 10, 2004, which was the first business day after the Rent Administrator's amended decision was issued on March 9, 2004. The thirteen (13) business day period provided in rules, 14 DCMR § 3802.2-.3 (2004), expired on March 26, 2004, as stated in the amended decision. The Commission's record does not contain a notice of appeal from the amended decision and order.

The Commission in a similar procedural posture of the appeal in Hubley v. Negley, TP 27,175 (RHC July 18, 2005) at 5, concluded:

When the ALJ issued an Amended Decision and Order, the original decision was replaced, and the housing providers were required to file a new Notice of Appeal to have standing before the Commission. The time period allotted to file the Notice of Appeal expired on [March 26, 2004]. As of that date, the housing providers' appeal of the Rent Administrator's Decision and Order dated [January 23, 2004] is dismissed, because the Commission lacks jurisdiction to hear the appeal.

IV. THE CONCLUSION

A. The Preliminary Issue

In this appeal, the amended decision and order was dated March 9, 2004, and stated that notices of appeal were to be filed no later than March 26, 2004. Therefore, the Commission does not have jurisdiction of the notice of appeal dated March 11, 2004, which states, "[t]he Tenant Petitioners below herein submit this Notice of Appeal of the Original Decision and Order of the Hearing Examiner, and refer the Commission to the January 23rd Order as well as the February 27, 2004 Order on Reconsideration." The Commission concludes that it is clear from the quoted text that the Tenants did not file a notice of appeal from the amended decision and order dated March 9, 2004. Therefore, the Commission lacks jurisdiction over the Tenants' March 11, 2004 notice of appeal from the decision and order issued January 23, 2004, which was filed during the time period stated on the March 9, 2004 decision and order for the filing of notices of appeal before March 26, 2004. See Amended Decision at 19. Accordingly, the Tenants' notice of appeal is DISMISSED.

B. The Issues raised in the Tenants' Notice of Appeal follow:

1. Whether the hearing examiner committed error when he disregarded the clear, convincing and uncontested testimony and evidence of the deplorable condition of the rental units.
2. Whether the hearing examiner committed error when he disregarded the clear,

convincing and uncontested testimony and evidence that the rent increases that were taken while their units were not in substantial compliance with the Housing Code.

3. Whether the hearing examiner committed error when he disregarded the clear, convincing and uncontested testimony and evidence that the conditions in the rental units were a substantial reduction in the services and facilities to which they were paying rent and that one of the Housing Providers (Noland Graves) was put on notice of the conditions and need for repairs.
4. Whether the hearing examiner committed error when he disregarded the clear, convincing and uncontested testimony and evidence when he failed to award any damages to the Tenants by way of rent refunds or rent reductions.
5. Whether the hearing examiner committed error when he found that the Housing Providers were not registered with the DCRA as exempt or otherwise, and fined them for that failure. However, he failed and/or refused to award any damages to the Tenants.
6. Whether the hearing examiner committed error when he was inconsistent in his ruling regarding the issue of retaliation. The Tenants presented substantial evidence that the Housing Providers retaliated against them and further reduced and eliminated services and facilities, by failing to correct the electrical service outage. The examiner agreed with the Tenants' claims, then later disagreed that there was retaliatory action directed towards them, then ruled that there was retaliation, but failed and/or refused to award any damages.
7. Whether the hearing examiner committed error when he placed upon the Tenants the prejudicial and burdensome obligation to present Housing Inspection reports and dismissed their overwhelming evidence and testimony of the condition of the premises; and refused to award them any damages despite finding that the premises were not in compliance.
8. Whether the hearing examiner committed error when he concluded that the Housing Providers acted in bad faith due to the fact that they "knowingly" engaged in activities that violated the Act, and fined them, but failed to award any damages to the Tenants.
9. Whether the hearing examiner committed error when he failed to address and resolve the issue of whether the rent increase was larger than the amount of increase allowed by any provision of the Rental Housing Act of 1985.
10. Whether the hearing examiner committed error when he failed to address and resolve the issue of whether a proper thirty (30) day notice of rent increase was provided before the rent increase became effective.

11. Whether the hearing examiner committed error when he failed to address and resolve the issue of whether the Housing Providers failed to file the proper rent increase forms with the Rental Accommodations and Conversion Division.
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13. Whether the hearing examiner committed error when he failed to address and resolve the issue of whether a rent increase was taken while the units were not in substantial compliance with the D.C. Housing Regulations.
14. Whether the hearing examiner committed error when he failed to address and resolve the issue of whether services and facilities provided in connection with the Tenants' units have been substantially reduced.
15. Whether the hearing examiner committed error when he failed to address and resolve the issue of whether a security deposit was demanded after the date the Tenants moved into the premises where no security deposits had been demanded or received.
16. Whether the hearing examiner committed error when he failed to address and resolve the issue of whether retaliatory action had been directed against the Tenants by the Housing Provider/Respondents, manager or other agent for exercising the Tenants' rights in violation of section 502 of the Rental Housing Act of 1985.

Based on the conclusion related to the preliminary issue that the Commission lacks jurisdiction over the notice of appeal from the January 23, 2004 decision and order, the Commission also DISMISSES the above 16 issues raised by the Tenants in their notice of appeal.

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON


RONALD A. YOUNG, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (1991), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (1991), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

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 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

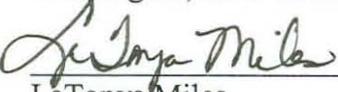
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in TP 27,859 was mailed by priority mail, with confirmation of delivery, postage prepaid this 28th day of September 2005, to:

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