

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,937

In re: 3045 N Street, N.W.

Ward Two (2)

RONA HAY
Tenant/Appellant

v.

PATRICK G. MERKLE
Housing Provider/Appellee

ORDER ON MOTION FOR SUMMARY AFFIRMANCE

May 25, 2004

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 March 24, 2004, the Rent Administrator issued the final decision and order on the Tenant's petition. On April 12, 2004, counsel for the Tenant filed the notice of appeal in the Housing Regulation Administration (HRA), rather than the Rental Housing Commission, which was named on the caption of the notice of appeal. On April 30,

2004, the Housing Provider filed a motion for summary affirmance of the decision and order. The Tenant's counsel did not file an opposition to the motion.

II. THE ISSUES

The motion for summary affirmance raised two issues:

- A. Whether the notice of appeal was timely filed; and
- B. Whether to grant the motion for summary affirmance.

III. Discussion and Decision on the Issues

A. Whether the notice of appeal was timely filed.

1. The Law on Appeals

The Rental Housing Act of 1985 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. D.C. OFFICIAL CODE § 42-3502.16(h) (2001). Cited in The New Capitol Park Twin Towers Tenants v. American Rental Mgmt. Co., TP 27,926 (RHC Jan. 23, 2004) (where the Commission dismissed an appeal that arrived by mail two (2) days late after the appeal period expired); Batista v. The Gelman Mgmt. Co., TP 27,640 (RHC Feb. 25, 2003) (where the Commission dismissed an appeal filed three (3) days late).

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).

2. The Analysis

The notice of appeal in the instant appeal was not timely filed in the Commission on or before April 12, 2004, the date stamped on the decision for filing notices of appeal. However, another DCRA office, HRA, accepted and file date stamped the notice of appeal on April 12, 2004. Therefore, in this appeal, the Commission also must consider the doctrine of agency estoppel, because the HRA accepted for filing the Tenant's notice of appeal. See Marriott v. Dowling, TP 27,016 (Jan. 29, 2002) (where the Commission discussed "unique circumstances" doctrine, which allows a late filing when a party relies on the conduct of a court, and discussed estoppel, which prevents an agency from injuring a party who relied on agency's conduct) citing Tenants of 2424 Pennsylvania Avenue, N.W. v. Lenkin Co. Mgmt., Inc., CI 20,346 (Sept. 22, 1992) (where the Commission accepted as timely filed, an appeal which was timely filed in the Office of Adjudication, which did not have jurisdiction over the appeal). Likewise, in this appeal, counsel for the Tenant relied on the filing of the notice of appeal in HRA, as a timely filed appeal, because it was accepted by HRA staff and date stamped. The Commission cannot deem the appeal as untimely filed, because another agency, HRA, accepted the appeal as timely filed. Accordingly, the notice of appeal is deemed timely filed and this issue in the motion for summary affirmance is denied.

B. Whether to grant the motion for summary affirmance.

1. The Law

In Shipley Gardens v. Tenants of Shipley Park Apartments, CI 20,130 (Dec. 18, 1987) the Commission stated:

As a threshold issue, we must determine whether the housing provider's requested relief—summary reversal—is appropriate in the case before us. 'Summary reversal is an extraordinary remedy for which the proponent has a 'heavy burden of demonstrating both that his remedy is proper and that the merits of his claim so clearly warrant relief as to justify expeditious action.' (Citations omitted.) There are two sub-questions at issue: (1) whether the case is one in which summary disposition is appropriate, and (2) whether the merits of the movants' claim warrant reversal.

In JBG Properties, Inc. v. Van Ness South Tenants Ass'n, TP 20,773 (RHC Mar. 17, 1986), we found justification for summary disposition of an appeal where only a single legal issue was involved and 'both parties have had ample opportunity to state their respective positions and their legal arguments.' Id. at 3.

See Redmond v. Graham, TP 24,681 (RHC Jan. 6, 2003); Prosper v. Pinnacle Mgmt., TP 27,783 (RHC Sept. 3, 2003); Rittenhouse, LLC v. Tenants of 45 Affected Rental Units, SF 20,049 (RHC June 19, 2002); Sydnor v. Johnson, TP 26,123 (RHC June 20, 2002).

2. The Analysis

This appeal raised three issues: 1) whether the hearing examiner erred in the determination "that the subject property was in substantial compliance with the District of Columbia housing regulations when the Housing Provider increased the rent;" 2) whether the decision "was incorrect in its conclusion that Petitioner [Tenant] did not establish that there was a substantial reduction of services and facilities, which adversely affected Petitioner's health and safety;" and 3) whether the decision "was incorrect in its finding that the Housing Provider had taken no retaliatory action against Petitioner." Notice of Appeal at 1. Therefore, pursuant to JBG Properties, Inc., supra, the notice of appeal does not qualify for a summary decision. Moreover, each issue complies with the

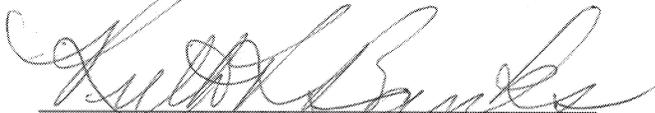
Commission's rule, 14 DCMR § 3802.5 (1991), which requires a statement of the errors in the decision and order. Cited in McKinney v. King, TP 27,264 (RHC July 24, 2002); Tenants of 2480 16th St., N.W. v. Dorchester Hous. Ass'n, CI 20,739 & CI 20,741 (RHC Jan. 14, 2000);

In addition, each issue requires a review of the hearing record for a determination whether the hearing examiner's decision is supported by substantial evidence in the record. The Housing Provider's motion for summary affirmance gave no reason for summary affirmance instead of the Commission performing its duty to review the record. D.C. OFFICIAL CODE § 42-3502.16 (2001).

IV. CONCLUSION

For the foregoing reasons the motion for summary affirmance is DENIED.

SO ORDERED.

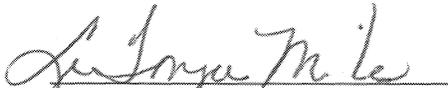

RUTH R. BANKS, CHAIRPERSON

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing (Decision and Order or ORDER ON MOTION FOR SUMMARY AFFIRMANCE in TP 27,937 was mailed by priority mail, with confirmation of delivery, postage prepaid this 25th day of May, 2004, to:

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