DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 28,031

In re: 3801 – 10th Street, N.W.

Ward Four (4)

PATRICIA & JOHN EVANS
Tenants/Appellants

v.

GLADYS ABREU-SWANN
Housing Provider/Appellee

ORDER ON SETTLEMENT AND WITHDRAWAL OF APPEAL

April 24, 2007

EDWARDS, COMMISSIONER. This case is on appeal from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Housing Regulation Administration (HRA), Rental Accommodations and Conversion Division (RACD), to the Rental Housing Commission (Commission). The applicable provisions of the Rental Housing Act of 1985 (Act), 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 (2004) govern these proceedings.

On September 24, 2004, Hearing Examiner, Saundra M. McNair in the Office of Adjudication issued the decision and order in this case. On October 13, 2004, the Tenant-Appellants filed an appeal in the Commission. A hearing on the appeal was held on January 21, 2005.

On April 18, 2007, a Notice of Settlement and a copy of the document titled settlement agreement and release between the Tenant-Appellants and the Housing Provider was filed in the Commission's office. While the document was filed pursuant to an action in the District of Columbia Superior Court Landlord & Tenant (L & T) Division, paragraph nine (9) of the agreement states that the release shall include Tenant Petition 28,031.

It should be noted that the settlement agreement was received prior to the Commission's issuance of a decision and order in the instant case.

I. THE LAW

In Williams Mgmt. Co. v. Richardson, et al., TPs 24,532 & 24,534 (RHC Dec. 17, 1999) the Commission stated:

> Settlement of litigation is to be encouraged. The Court in Proctor v. District of Columbia Rental Hous. Comm'n, 484 A.2d 54 (D.C. 1984) required the Commission to consider: 1) the extent to which the settlement enjoys support among the affected Tenants, 2) the potential for finally resolving the dispute, 3) fairness of the proposal to all affected persons, 4) saving of litigation costs to the parties, and 5) difficulty of arriving at prompt final evaluation of merits, given complexity of law, and delays inherent in administrative and judicial process. Id. at 548. When a case is settled on appeal, the pending litigation will be considered moot, and further court action is unnecessary. Milar Elevator Co. v. District of Columbia Dep't of Employment Serv., 704 A.2d 291 (D.C. 1997). The Commission is required to review all settlement agreements that dispose of appeals. Where the parties have agreed that a settlement agreement would be dispositive on the appeal and underlying tenant petition, the Commission has approved such requests and dismissed the petition. Kenmore Apartments Joint Venture v. Tenants of 5414 Connecticut Ave., N.W., CI 20,724 & TP 24,055 (RHC Feb. 8, 1999).

Id. at 2.

II. THE ISSUES

A. Whether to Approve the Settlement Agreement.

The settlement agreement and release are supported by both Tenant-Appellants, and the Housing Provider. There is finality as to the resolution of all issues between the parties. Moreover, both Tenant-Appellants and Housing Provider-Appellee benefit from the settlement agreement, thereby making the agreement fair and equitable on both sides. Both parties shall benefit financially as the agreement calls for an apportionment of funds between the parties. The funds are presently held in the court registry. It provides for an orderly process with respect to the Tenant Appellants vacating the premises. Both parties were represented by counsel in the court proceeding and in the instant case before the Commission. The settlement agreement saves further litigation costs to both parties. The Agreement addresses the claims enumerated in TP 28,031 as well as L&T cases 03-04272 and 05-39385. The claims concern rent, attorney fees, late charges, triple damages claims, rental overcharge claims, breach of the warranty of habitability, occupant counterclaims, setoff, recoupment, retaliation and all other claims which were or could have been made in the L&T action, and, specifically the TP pending before the Commission. Paragraph nine (9) of the settlement agreement states:

> The intent and purpose of this Agreement is to effectuate a full, final, complete and irrevocable settlement and release, with prejudice, of any and all claims raised in LT 03-04272, Tenant Petition 28, 031 and LT 05-39385, among or between Plaintiff and her co-owners of the property on the one hand on the other, Defendants, with respect to claims made or which could have been made in this action, the LT Action and the TP before DCRA.

B. Whether to Dismiss the Tenant Petitions with Prejudice and Vacate the Hearing Examiner's Decision.

The Tenants have the right to withdraw their claims in the tenant petitions. Sup. Ct. R. 41(a) states:

> (a) Voluntary dismissal: Effect thereof.

> (1) By Plaintiff, ...by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice..., (emphasis added.)

In the instant case, both parties signed a settlement and release agreement containing the language that the underlying case be considered dismissed with prejudice. (emphasis added.) The Commission approves the Settlement and Release Agreement. Absent the Tenant Petition, there is no rational basis for the Hearing Examiner's decision. Therefore, the Hearing Examiner's decision is vacated in accordance with the terms set forth in the Settlement and Release Agreement.

III. CONCLUSION

The appeal in this case is dismissed as moot, because the parties have settled all issues, the underlying tenant petition is dismissed with prejudice, and the hearing examiner's decision is vacated.

SO ORDERED.

DONATA L. EDWARDS, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14DCMR § 3823.1 (2004), 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, DC 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in TP 28,031 was mailed postage prepaid by priority mail, with delivery confirmation on this **24th** day of April, 2007 to:

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