DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 28,071

Ward One (1)

In re: 1413 T Street, N.W., unit 407

GLORIA TAYLOR and TIMOTHY TAYLOR
Tenants/Appellants

v.

DANIEL K. BAIN
Housing Provider/Appellee

DECISION AND ORDER

June 28, 2005

PER CURIAM. This case is on appeal to the Rental Housing Commission (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 1, 2004, Gloria and Timothy Taylor filed the instant petition, TP 28,071, with RACD regarding the housing accommodation located at 1413 T Street, N.W., unit 407. TP 28,071 alleged the following: (1) the housing provider took a rent increase larger than the amount of increase allowed by any applicable provision of the

Act; (2) the rent being charged exceeded the legally calculated rent ceiling for her unit; (3) a rent increase was taken while her unit was not in substantial compliance with the D.C. Housing Regulations; (4) services and/or facilities provided in connection with the rental of her unit were substantially reduced; (5) the Housing Provider, manager or other agent of the Housing Provider of their unit violated the provisions of § 42-3502.06 (2001) of the Act; and (6) the Housing Provider violated § 42-3402.08(b) of the Rental Housing Conversion and Sale Act (RHCSA) by raising the rent level.

On May 6, 2004, a hearing was held with Hearing Examiner Carl Bradford presiding. Both parties were present at the hearing; counsel, Bernard A. Gray, Sr., represented Gloria and Timothy Taylor, the Tenants, and counsel, Morris R. Battino represented Daniel K. Bain, the Housing Provider. At the RACD hearing, counsel for the Housing Provider moved to dismiss TP 28,071 based on the doctrine of res judicata, and proffered a copy of the decision and order in a previous tenant petition, TP 27,775. In TP 27,775, Gloria and Timothy Taylor alleged several complaints against the housing provider, Daniel K. Bain, involving the following: 1) illegal increases in rent; 2) substantial reduction of services and facilities; 3) lack of building registration; 4) retaliation; 5) illegal notice to vacate; and 6) substantial housing code violations, all prohibited by the Rental Housing Act of 1985. On May 12, 2003, the decision and order in TP 27,775 dismissed the Taylors' petition with prejudice under the doctrine of res judicata based on the Housing Provider's June 5, 2003, suit filed against the Tenants in the Landlord and Tenant Branch of the Superior Court of the District of Columbia for possession of the rental property for non payment of rent.[1] On June 6, 2003, the Tenants

[1] The May 12, 2003, decision in TP 27,775 refers to a future date of June 5, 2003, when the Housing Provider filed a suit against the Tenants in the Landlord and Tenant Branch of the Superior Court of the

filed a Motion to Extend the Time to File a Motion for Reconsideration of the Order of May 12, 2003 or in the alternative Extend the Time to Note an Appeal in TP 27,775, which was denied on June 16, 2003.

On August 16, 2004, the hearing examiner issued the decision and order in TP 28,071. The decision and order contained the following:

Findings of Fact:

1. Petitioners have been tenants at 1413 T Street, N.W., Washington, D.C. 20009 since August 1, 1992.

2. Daniel Bain owns the housing accommodation located at 1413 T Street, N.W., Washington, D.C. 20009.

3. Respondent filed a claim of exemption on April 24, 2002.

4. The housing accommodation is exempt from rent control pursuant to D.C. Official Code § 42-3502.05(a)(3) (2001).

5. Petitioners filed T/P 27,775 on March 7, 2003.

6. A Decision and Order was issued on the merits in T/P 27,775 on May 12, 2003.

7. The Rent Administrator does not have jurisdiction over the subject issue regarding elderly and low income tenants pursuant to D.C. Official Code § 42-3402.08(a) (2001).

Conclusion of Law:

1. Respondent has registered the subject housing accommodation pursuant to D.C. Official Code § 42-3502.05(a)(3) (2001).

2. The petition is dismissed based on res judicata and lack of jurisdiction.

Taylor v. Bain, TP 28,071 (RACD Aug. 16, 2004) (Decision) at 6.

District of Columbia. Since TP 27,775 was not appealed to the Commission, it cannot correct this plain error. See 14 DCMR § 3807.4 (1991). See also Proctor v. Distrit of Columbia Rental Hous. Comm'n, 484 A.2d 543, 550 (D.C. 1984) (holding that the Commission may correct plain error).

II. THE NOTICE OF APPEAL

Counsel for the Tenants raised two (2) issues in the notice of appeal:

A. Whether res judicata precludes the Commission from deciding the issues on appeal in TP 28,071.

B. Whether the hearing examiner erred by finding that the property was exempt and that the hearing examiner has no jurisdiction to adjudicate the claim.

III. DISCUSSION

A. Whether res judicata precludes the Commission from deciding the issues on appeal in TP 28,071.

In the case below, the hearing examiner dismissed TP 28,071 with prejudice based on res judicata and lack of jurisdiction. Decision at 7. The doctrine of res judicata applies in instances involving the same parties and the same claims with the same evidence necessary to establish the claims. See Henderson v. Snider Bros., Inc., 439 A.2d 481, 484 (D.C. 1981). Res judicata requires that a valid, final judgment rendered on its merits become an absolute bar to a subsequent action involving the same parties or the same claim. Id. at 485. The Court has established that "[u]nder the doctrine of res judicata … a judgment estops not only as to every ground of recovery or defense actually presented in the action, but also as to every ground which might have been presented …." Id., citing Cromwell v. County of Sac., 94 U.S. 351, 383 (1877). The proponent of the res judicata claim, an affirmative defense, bears the burden of proving: 1) that the prior decision on which the proponent bases the res judicata claim was a final decision on the merits; and 2) that the earlier litigation was based on the same cause of action. See Amos v. Shelton, 497 A.2d 1082, 1084 (D.C. 1985).

In order to begin the inquiry as to whether res judicata applies in the instant case, the Housing Provider must first demonstrate that the prior decision that he relies on was a

final decision on its merits. Here, the Housing Provider asserted at the hearing that the decision in TP 27,775 was a final decision and submitted a copy of the decision and order into evidence as proof that the decision was final. Moreover, there was no appeal from the decision in TP 27,775 filed in the Commission further supporting the Housing Provider's assertion that the decision was final. Contrarily, the tenants argue that TP 27,775 is not a final decision. Counsel for the Tenants states:

> There has been filed a Motion to Vacate the Decision and Order in TP 27,775 holding that the Petitioners' rights have been cut off by res judicata in a landlord and tenant decision and order in a case which was dismissed because the landlord did not properly serve a Notice to Quit.
>
> A landlord and tenant case dismissed for failure to properly serve a notice to quit has no effect on any subsequent action even in a landlord and tenant case file. Such a dismissal is without prejudice....

Notice of Appeal at 1.

There are three levels of cases to examine in this appeal when applying the doctrine of res judicata; the landlord and tenant action in the Superior Court of the District of Columbia, the first tenant petition, 27,775, and the current petition before the Commission on appeal, TP 28,071. In the instant petition, the Tenants raised in the notice of appeal an issue by referring to a prior landlord and tenant action in the Superior Court of the District of Columbia, L&T 020155-03, that served as the basis for the res judicata dismissal with prejudice of the first tenant petition, TP 27,775. Counsel for the Tenants argued in the notice of appeal of TP 28,071, that the decision in the landlord and tenant action, L&T 020155-03, did not provide the proper basis for the res judicata dismissal in TP 27,775, because the dismissal for failure to properly serve a notice to quit in the landlord and tenant case is a dismissal without prejudice; and therefore, caused the erroneous dismissal of TP 27,775, which caused the erroneous res judicata dismissal in

TP 28,071. Although dismissals without prejudice do not prohibit a subsequent suit based on issues arising out of the same cause of action, no appeal was ever filed regarding the decision in TP 27,775.[2] In TP 27,775, only a Motion to Extend the Time to File a Motion for Reconsideration was filed, but the motion was denied because it was filed after the ten (10) day time limit pursuant to 14 DCMR § 4013.1 (1991). Record (R.) at 47. Therefore, the decision in TP 27,775 is a final decision on its merits.[3]

The dismissal of TP 27,775 with prejudice under the doctrine of res judicata is a final decision on its merits. Res judicata attaches to the subject matter and its component parts when an action is dismissed with prejudice. See Burns v. Fincke, 197 F.2d 165, 166 (D.C. Cir. 1952). In the instant case, because there was no appeal filed to the Commission, the decision in TP 27,775 was a final decision on its merits. Accordingly, the Commission holds that there is substantial evidence in the record to support the Housing Provider's contention that TP 27,775 was a final decision on its merits.

The second element of the res judicata inquiry that the Housing Provider has the burden to prove is that the underlying action was based on the same issues as the current action. In proving the identity of the parties and the issues, a comparison of the tenant petitions may be conducted. See Mooskin v. Bourge, TP 27,809 (RHC Dec. 11, 2003). However, "[t]o evaluate a claim of preclusion, the trier of fact must, "have before it the exhibits and records involved in the prior case ...," Johnson v. District of Columbia Rental Hous. Comm'n, 642 A.2d 135, 139 (D.C. 1994), citing Block v. Wilson, 54 A.2d

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[2] See Pipher v. Odell, 672 A.2d 1092, 1095 (D.C. 1996) (holding that a dismissal without prejudice, by definition, does not, under the doctrine of res judicata, bar a subsequent suit of issues arising out of the same cause of action).

[3] Counsel for both parties refer to a motion to vacate the decision currently pending before the Rent Administrator filed by the Counsel for the Tenant, but there is no record evidence of that motion. Therefore, this does not affect the finality of the judgment in TP 27,775.

646, 648 (D.C. 1947). In the present case, the Housing Provider submitted, as evidence in the record, copies of TP 27,775, the order that denied the motion for reconsideration for TP 27,775, as well as the decision and order in TP 27,775. R. at 48, 54, 63. The Housing Provider has demonstrated that Gloria and Timothy Taylor, the Tenants, along with Daniel Bain, the Housing Provider were the same parties in both the initial case, TP 27,775, and the present case, TP 28,071.

The Housing Provider also demonstrated that there were similarities in the issues raised in both tenant petitions. The instant tenant petition, TP 28,071 included several complaints involving the increase in rent such as: 1) the rent increase was larger than the amount allowed by the Act; 2) the rent being charged exceeds the legally calculated rent ceiling; and 3) a rent increase was taken while their unit was not in substantial compliance with the D.C. Housing Regulations. R. at 19. Tenant Petition 28,071 also includes the following other complaints: 1) services and/or facilities provided in connection with their rental unit had been substantially reduced; 2) the Housing Provider violated the provisions of § 42-3502.06 of the Act; and 3) the Housing Provider violated § 42-3402.08(b) of the Rental Housing Conversion and Sale Act (RHCSA) by raising the rent level. R. at 17. All of these complaints were alleged in the underlying case, TP 27,775, with the exception of the rent increase being larger than the amount allowed by the Act, that the Housing Provider violated the provisions of §42-3502.06 of the Act, and that the Housing Provider violated § 42-3402.08(b) of the RHCSA. However, all of these complaints could have been raised in the first tenant petition, TP 27,775, and therefore are precluded by res judicata from being adjudicated in the subsequent tenant petition, TP 28,071. See Henderson, 439 A.2d at 485. Thus, the Commission concludes that the

Housing Provider has met the burden of proof by establishing that the underlying tenant petition, TP 27,775, was based on the same cause of action as the instant petition, TP 28,071. Accordingly, the Commission affirms the Hearing Examiner's dismissal of TP 28,071 with prejudice under the doctrine of res judicata.

B. Whether the hearing examiner erred by finding the property exempt and that the hearing examiner has no jurisdiction to adjudicate the claim.

The hearing examiner, in finding of fact numbered four (4), concluded that the Housing Provider was exempt from rent control pursuant to D.C. OFFICIAL CODE § 42-3502.05(a)(3) (2001). Decision at 7. This provision states:

> (a) Sections 42-3502.05(f) through 42-3501.19, except § 42-3502.17, shall apply to each rental unit in the District except:
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> ...
>
> (3) Any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 rental units whether within the same structure or not, provided:
>
> (A) The housing accommodation is owned by not more than 4 natural persons;
>
> (B) None of the housing providers has an interest, either directly or indirectly, in any other rental unit in the District of Columbia;
>
> (C) The housing provider of the housing accommodation files with the Rent Administrator a claim of exemption statement which consists of an oath or affirmation by the housing provider of the valid claim to the exemption. The claim of exemption statement shall also contain the signatures of each person having an interest, direct or indirect, in the housing accommodation. Any change in the ownership of the exempted housing accommodation or change in the housing provider's interest in any other housing accommodation which would invalidate the exemption claim must be reported in writing to the Rent Administrator within 30 days of the change;
>
> (D) The limitation of the exemption to a housing accommodation owned by natural persons shall not apply to a housing

accommodation owned or controlled by a decedent's estate or testamentary trust if the housing accommodation was, at the time of the decedent's death, already exempt under the terms of paragraphs (3)(A) and (3)(B) of this subsection; and

(E) For purposes of determining the eligibility of a condominium rental unit for the exemption provided by this paragraph, by § 42-3404.13(a)(3), or by § 42-4016(a)(3), a housing accommodation shall be the aggregate of the condominium rental units and any other rental units owned by the natural person(s) claiming the exemption.

D.C. OFFICIAL CODE § 42-3502.05(a)(3) (2001).

As stated above, there are specific requirements that must be met in order to qualify for a claim of exemption. In Goodman v. District of Columbia Rental Hous. Comm'n, 573 A.2d 1293 (D.C. 1990), the court states, "[t]he landlord has the burden of proving that he is exempt from the coverage of the Rental Housing Act, and the statutory exemptions are to be narrowly construed." Goodman at 1297. In the instant case, the record reflects that the Housing Provider filed the proper claim of exemption forms with Department of Consumer and Regulatory Affairs (DCRA) and testified that he owned fewer than four (4) rental units in the District of Columbia. R. at 52. Accordingly, the hearing examiner did not err when he found the Housing Provider exempt pursuant to the small housing provider exemption in § 42-3502.05(a)(3) of the Rental Housing Act (Act).

However, the Tenants argue that Gloria Taylor is a low income elderly tenant who qualifies for statutory tenancy pursuant to § 42-3402.08, which provides:

(a) *Eviction limited.* – Notwithstanding any other provision of this subchapter, the Condominium Act, or the Rental Housing Act, an owner of a rental unit in a housing accommodation converted under the provisions of this chapter shall not evict or send notice to vacate to an elderly tenant with an annual household income, as determined by the Mayor, of less than $40,000 per year unless:

(1) The tenant violates an obligation of the tenancy and fails to correct the violation within 30 days after receiving notice of the violation from the owner;

(2) A court of competent jurisdiction has determined that the tenant has performed an illegal Act within the rental unit or housing accommodation; or

(3) The tenant fails to pay rent.

(b) *Rent level.* – Any owner of a converted unit shall not charge an elderly tenant rent in excess of the lawful rent at the time of request for a tenant election for purposes of conversion plus annual increases on that basis authorized under the Rental Housing Act.

...

D.C. OFFICIAL CODE § 42-3402.08 (2001).

Gloria Taylor entered into evidence a letter verifying her status as an elderly tenant pursuant to § 42-3402.08. R. at 27. The hearing examiner found that he had no jurisdiction to adjudicate this claim of statutory tenancy, because it was based on the Rental Housing Conversion and Sale Act (RHCSA). Although, RHCSA does not explicitly give jurisdiction to the Rent Administrator to adjudicate claims arising under its provisions, the elderly tenancy provision in question requires special consideration, because it provides protections to elderly tenants by referring to the Rental Housing Act.

The issue of jurisdiction requires analysis of two acts in this instance. The Commission, in deciding this issue, held in Sendar v. Burke, TP 20,772 (RHC Apr. 6, 1988), the "Rent [A]dministrator is the proper person to make initial determinations of allowable rents for elderly tenants under the RHCSA [§ 42-3402.08(b)] ... [which] contains a specific cross-reference to the Rental Housing Act, and the determination of allowable rents under RHCSA involves the same kinds of issues that are routinely

considered by the Rent Administrator in determining rent ceilings under the Act."[4] Also, the Commission in Sendar, a case with similar facts, resolved the conflict between the exemption provision of the Act pursuant to § 42-3502.05(a)(3) and the elderly tenant protection of RHCSA, § 42-3402.08. The Commission referred to the purposes of both Acts and their intended effects of protecting lower income tenants from increasing housing costs when resolving the stated conflict in Sendar. See generally D.C. OFFICIAL CODE §§ 42-3401.02, 42-3501.02 (2001). In Sendar, the Commission held that the elderly tenancy provision, RHCSA, § 42-3402.08, imposes a valid form of Rental Housing Act rent control regardless of the Housing Provider's eligibility for a small housing provider exemption pursuant to the Act § 42-3502.05. See Sendar v. Burke, TP 20,772 (RHC Apr. 6, 1988) at 8.

The instant petition arises directly under these circumstances. Here, the Housing Provider filed a small housing provider claim of exemption, which the Rent Administrator approved. In response, the Tenants raised the defense that the Housing Provider could not be exempt, because of the Taylors' valid claim of elderly tenancy. The Commission concludes that the elderly tenancy issue raised in TP 28,071 was well within the jurisdictional limits of the Rent Administrator, and that the Tenants' elderly tenancy status prevails over the small housing provider exemption from the Act's rent control provisions. Therefore, the hearing examiner erred in failing to find jurisdiction to adjudicate this claim; however, this does not require a reversal, because res judicata precludes the Commission from deciding this issue.

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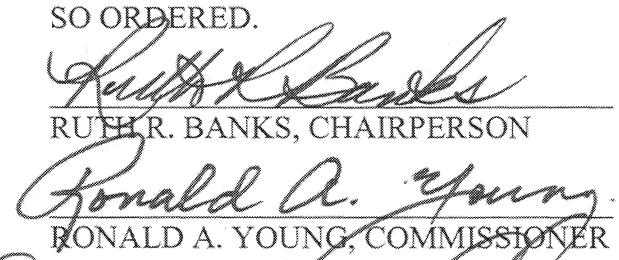
[4] See also Washington Federal Savings and Loan Ass'n v. Whiteside, 488 A.2d 936, 937 (D.C. 1986) (holding that the Rent Administrator has jurisdiction to determine its jurisdiction over the complaint).

The Taylors raised this very same defense of elderly tenancy pursuant to RHCSA § 42-3402.08 in the landlord and tenant action in the Superior Court of the District of Columbia case, L&T 020155-03, that provided the basis for the first tenant petition's, TP 27,775, dismissal under the doctrine of res judicata. Therefore, the tenants are barred from raising the same issue in the subsequent petition, TP 28,071, against this Housing Provider. Accordingly, the Commission holds that the dismissal of this claim under the doctrine of res judicata is affirmed.

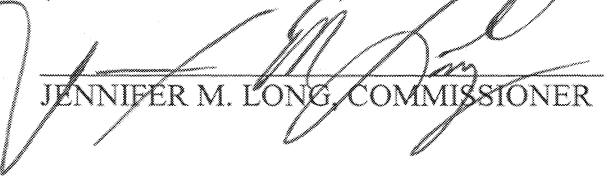
IV. CONCLUSION

The Commission concludes that the hearing examiner erred by finding a lack of jurisdiction to adjudicate the Tenants' elderly tenancy issue raised in defense of the Housing Provider's exemption to the Rental Housing Act, and thus reverses this finding. However, the Commission affirms the hearing examiner's dismissal of TP 28,071 under the doctrine of res judicata.

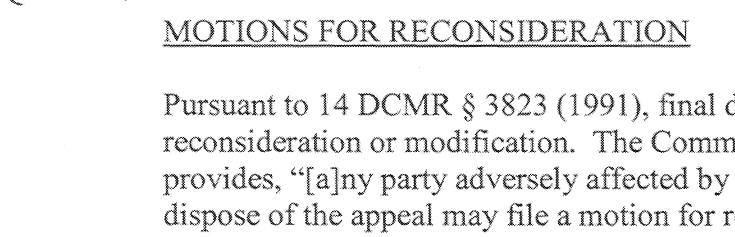
SO ORDERED.



RUTH R. BANKS, CHAIRPERSON



RONALD A. YOUNG, COMMISSIONER



JENNIFER M. LONG, 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

CERITIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in TP 28,071 was mailed by priority mail, with confirmation of delivery, postage prepaid this 28 day of June 2005, to:

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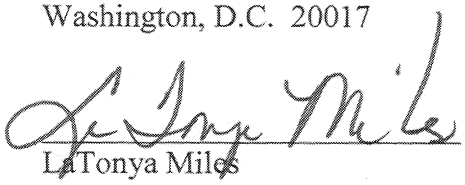

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