

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 28,151

In re: 2514 4th Street, N.E., Unit 103

Ward Five (5)

WASHINGTON COMMUNITIES
Housing Provider/Appellant

v.

JESSIE JOYNER
Tenant/Appellee

ORDER ON MOTION FOR SUMMARY DISMISSAL

November 3, 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 June 13, 2005, the Rent Administrator issued the decision and order on the tenant petition. On June 29, 2005, the Housing Provider filed a notice of appeal in the Commission. On September 30, 2005, counsel for the Tenant filed a motion for summary dismissal of the appeal, because the Housing Provider did not comply with 14

DCMR § 3802.5 (2004), which requires a clear and concise statement of the appeal issues, and because the Housing Provider did not comply with the escrow provisions of the Commission's rules, 14 DCMR § 3806 (2004).

II. THE DISCUSSION OF THE ISSUES IN THE MOTION

The Tenant argues in the motion for summary dismissal that the notice of appeal is defective and should be dismissed for failure to provide, pursuant to 14 DCMR § 3802.5 (2004), a clear and concise statement of the errors in the decision. Motion at unnumbered pages 1 & 2. The Tenant argued in the motion for summary dismissal that the notice of appeal does not give notice of the appeal issues, which are stated as "mere general allegations ... without specification of questions of law and fact." Motion at unnumbered page 2.

The Tenant's brief on the motion for summary dismissal stated that four (4) of the seven (7) allegations of error in the notice of appeal start with the words, 'the Hearing Examiner erred' without specification of the factual or legal errors. Brief at unnumbered page 3.

The Commission's review of the notice of appeal shows: 1) issue number one (1) states the alleged error was assessing a fine without record support that the Housing Provider acted "willfully"¹; 2) issue five (5) stated the alleged error was finding the rent increase exceeded the amount permitted by the Unitary Rent Ceiling Adjustment Act [one of the amendments to the Act]²; 3) issue six (6) stated the alleged error was that the notice of rent increase was less than 30 days prior to the effective date of the rent

¹ This issue is pursuant to the terms of the Act at D.C. OFFICIAL CODE § 42-3509.01(b) (2001).

² Id. at § 42-3502.08(h)(2).

increase³; and 4) issue seven (7) stated the alleged error was the finding that the vacant rent ceiling adjustment of \$100.00 exceeded the largest available rent ceiling adjustment.⁴

A review of these issues in the notice of appeal informs the Commission there was sufficient specificity to give due process, including fair and adequate notice of the alleged errors, as they relate to allegations of error under the various sections of the Act.

Accordingly, on these four issues, the motion for summary dismissal is denied.

The brief on the motion for summary dismissal also specifically challenges issue two in the notice of appeal (2) which states, “[t]he Decision and Order failed to provide a complete description of the testimony and evidence present in this matter.” Brief at unnumbered page 3. In Harris v. District of Columbia Rental Hous. Comm’n, 505 A.2d 66, 69 (D.C. 1986), the court stated, that the hearing examiner was not bound to list each and every piece of evidence considered when rendering the decision. Accordingly, this issue is denied.

The next issue in the motion for summary dismissal is whether the Housing Provider complied with the escrow provisions of the Commission’s stay rules, 14 DCMR § § 3802.10, 3806 (2004), which state:

3802.10 Any party appealing a decision of the Rent Administrator which orders the payment of money may stay the enforcement of such decision by establishing an escrow account or purchasing a supersedeas bond which complies with the requirements of § 3806 within five (5) days of filing the notice of appeal.

3806.1 Whenever the Commission orders, or these rules require, that an escrow account be established by a party, the conditions set forth in this section shall apply.

3806.2 The amount of money specified in the order shall be placed in a

³ Id. at § 42-3509.04(b).

⁴ Id. at § § 42-3502.08 & 3502.13

bank or other financial institution within the District of Columbia.

- 3806.3 The deposit shall be placed in an account that pays the prevailing rate of interest.
- 3806.4 The sum deposited shall be placed in escrow and outside of the control of the party depositor.
- 3806.5 The escrow agent shall be unable to release the sum deposited in any way other than as ordered by the Commission.
- 3806.6 The party establishing the escrow account shall file a copy of the escrow agreement with the Commission and the opposing party.
- 3806.7 The escrow account shall be established within the time period specified by the Commission.
- 3806.8 Any party ordered to or required under this section to establish an escrow account may in lieu thereof purchase a supersedeas bond that complies with the provisions of this section. (emphasis added).

The motion asserted that the Housing Provider had not complied with §§ 3802.10 and 3806, quoted above. The Commission's rules require the establishment of an escrow account or the purchase of a supersedeas bond to stay the effectiveness of the decision and order on appeal, along with notice of the escrow account to the Commission and to the opposing party. The Housing Provider is the opposing party and has not filed an opposition to the Tenant's motion for summary dismissal. The Tenant relies on Mullin v. Dist. of Columbia Rental Hous. Comm'n, 844 A.2d 1138 (D.C. 2004), cert. denied, 125 S. Ct. 615 (2004). There the court held the Commission had inherent authority to dismiss an appeal when the tenant/appellant did not comply with the Commission's order to establish an escrow account or purchase a supersedeas bond.

The instant appeal is a different type of case. Mullin was a case where the Housing Provider obtained approval of a hardship petition rent ceiling increase and

increased the rent charged. The tenant refused to pay the new rent charged and refused to establish an escrow account on appeal, after ordered by the Commission.

The instant appeal is about alleged rent overcharges, which resulted in a decision and order for rent refund. In Strand v. Frenkel, 500 A.2d 1368 (D.C. 1985) the court held that in cases of rent overcharges, the stay is automatic. Strand was cited in Hanson v. Dist. of Columbia Rental Hous. Comm'n, 584 A.2d 592, 595 (D.C. 1991), where the court interpreted the regulations, § § 3802.10 & .11. The court stated:

[T]he Commission action was not 'final' and could not be enforced in the trial court until after judicial review of the agency's action was completed or the appeal period has expired. (citation omitted). If Commission actions cannot be judicially enforced, then it would seem to follow logically that RACD decisions of the hearing examiner also cannot be enforced until appellate review has been exhausted. (citation omitted). If the decisions of the hearing examiner cannot be enforced until after judicial review, then there is no need for rules requiring a motion to stay since decisions of the examiner are, in effect, automatically stayed. Since the regulations were inconsistent with the doctrine of primary jurisdiction, the Commission was not bound to follow them. (citation omitted.) (emphasis added.)

The Commission noted that in the instant appeal, the Tenant did not cite 14 DCMR § 3802.11 (2004) which states:

The payment of money described in §3802.10 shall include the award of rent increases to a housing provider. Establishment of an escrow account or the purchase of a supersedeas bond pursuant to § 3802.10 shall be based on at least six (6) months of the rent increase per party appealing; Provided, that the escrow may be paid in monthly deposits during the pendency of the appeal and the appellee shall be notified of the deposits.

Since the instant appeal pending in the Commission concerns the validity of rent overcharges, the decision on appeal is not final for enforcement, as stated in

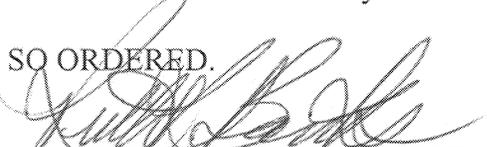
Hanson. Cited in Vincente v. Hinton, TP 27,188 (RHC May 27, 2004); Smith v. Christian, TP 27,661 (RHC Dec. 16, 2003); Lamb v. Anari, Inc., TP 27,666 (RHC

July 3, 2003); Oxford House-Bellevue v. Asher, TP 27,583 (RHC June 10, 2003),
Redman v. Graham, TP 24,681 (RHC Nov. 21, 2002 & Jan. 6, 2003); Lanier
Assoc./Larry Drell v. 1773 Lanier Place, N.W., Tenants' Assoc., TP 27,344 (RHC
Nov. 8, 2002); Vicente v. Anderson, TP 27,201 (RHC Sept. 23, 2002); Barnes v.
MacDonald, TP 25,070 (RHC Oct. 3, 2001); Dias v. Perry, TP 24,379 (RHC June
17, 1999); Savoy Trust v. Clark, TP 11,784 (RHC Apr.23, 1987). Similarly, the
stay rules do not apply to this appeal.

V. THE CONCLUSION

The motion for summary dismissal is DENIED.

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing ORDER ON MOTION FOR SUMMARY DISMISSAL in TP 28,151 was mailed by priority mail, with confirmation of delivery, postage prepaid this 3rd day of November, 2005, to:

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