

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 28,220

In re: 3133 Connecticut Avenue, N.W.

Ward Three (3)

DON WASSEM
Tenant/Appellant

v.

TANYA MARHEFKA
Housing Provider/Appellee

ORDER ON REMAND

May 6, 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 (1991), govern the proceedings.

I. THE PROCEDURES

On March 25, 2005, the Rent Administrator issued the decision and order on the Tenant's petition. On April 25, 2005, the Tenant filed a notice of appeal in the Rental Housing Commission. The Commission requested and received the Rent Administrator's certified file, pursuant to 14 DCMR § 3804 (1991). The Commission reviewed the first

of two hearing tapes of the hearing held on January 24, 2005. It is blank, meaning nothing was recorded on the first of two tapes.

II. THE ISSUE

Whether the Commission can process this appeal.

III. THE LAW

The Rental Housing Act of 1985, D.C. OFFICIAL CODE § 42-3502.16(h) (2001), provides that the Commission consider the “substantial evidence” in the record on appeal. The hearing tapes are a part of the certified record, 14 DCMR § 3804.3(b) (1991). When there was partial recording of a hearing, the Commission remanded for lack of a complete recording of the hearing testimony. See Mersha v. Town Ctr. Ltd. P’ship, TP 24,970 (RHC Dec. 21, 2001); Joyce v. Webb, TP 20,720 (July 31, 2000). The law also provides, “testimony and exhibits, ... shall constitute the exclusive record for order or decision.” D.C. OFFICIAL CODE § 2-509(c) (2001) (where the Commission remanded because the transcripts showed the hearing tapes were unclear and could not be transcribed.)

IV. THE CONCLUSION

The Commission is unable to process this appeal, because of the partial recording of the Rent Administrator’s hearing. Accordingly, this appeal is dismissed and remanded to the Rent Administrator for a hearing de novo due to the lack of complete recording of the Rent Administrator’s hearing.

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON

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:

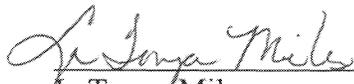
D.C. Court of Appeals
Office of the Clerk
500 Indiana Avenue, N.W.
6th Floor
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing ORDER ON REMAND in TP 28,220 was mailed by priority mail, with confirmation of delivery, postage prepaid this 6th day of May, 2005, to:

Don Wasseem
3133 Connecticut Avenue, N.W.
Washington, D.C. 20008

Richard Luchs, Esquire
Greenstein, DeLorme & Luchs, P.C.
1620 L Street, N.W.
Suite 900
Washington, D.C. 20036-5605



LaTonya Miles
Contact Representative
(202) 442-8949