

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 28,282

In re: 421 M Street, N.E., Unit 3

Ward Six (6)

DIANE FREEMAN
Tenant/Appellant

v.

RHONDA HAMILTON
Housing Provider/Appellee

ORDER ON MOTION TO STRIKE NOTICE OF APPEAL

January 17, 2006

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 October 27, 2005, Senior Hearing Examiner Gerald Roper issued the decision and order on TP 28,282. The decision stated that notices of appeal to the Rental Housing Commission must be filed no later than November 17, 2005. On November 18, 2005, Diane Freeman, Tenant/Appellant, filed a notice of appeal in the

Commission. On December 22, 2005, counsel for the Housing Provider filed a motion to strike the notice of appeal, because it was untimely filed one day beyond the deadline in the decision.

II. THE ISSUE

Whether the Tenant's notice of appeal was timely filed.

III. THE LAW

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).

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. Dist. of Columbia Rental Hous. Comm'n, 505 A.2d 1310 (D.C. 1986); Totz v. Dist. of Columbia Rental Hous. Comm'n, 474 A.2d 827 (D.C. 1974). The Commission determines the time period between the issuance of the RACD decision and the filing of the notice of appeal by counting only business days, as required by its rules. See 14 DCMR § 3802.2 (2004); Town Center v. Dist. of Columbia Rental Hous. Comm'n, 496 A.2d 264 (D.C. 1985).

The Commission's rules state:

No pleading or other documents shall be deemed filed until actually received at the Commission's office and compliance with time requirements shall be calculated from the date of actual receipt.

14 DCMR § 3801.2 (2004).

A notice of appeal shall be filed by the aggrieved party within ten (10) days after a final decision of the Rent Administrator is issued; and if the decision is served by mail an additional three (3) days shall be allowed.

14 DCMR § 3802.2 (2004).

The filing of a notice of appeal removes jurisdiction over the matter from the Rent Administrator; Provided that if both a timely motion for reconsideration and a timely notice of appeal are filed with respect to the same decision, the Rent Administrator shall retain jurisdiction over the matter solely for the purpose of deciding the motion for reconsideration, and the Commission's jurisdiction with respect to the notice of appeal shall take effect at the end of the ten (10) day period provided by §4014.

14 DCMR § 3802.3 (2004).

When the time period is ten (10) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

14 DCMR § 3816.3 (2004).

If a party is required to serve papers within a prescribed period and does so by mail, three (3) days shall be added to the prescribed period to permit reasonable time for mail delivery.

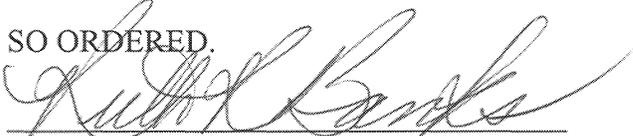
14 DCMR § 3816.5 (2004).

In this appeal, the thirteen business day time period commenced on October 28, 2005, which was the first business day after the Rent Administrator's decision was issued and served by mail. The thirteen business day period provided in rules, 14 DCMR § 3802.2-.3 (2004), ended on November 17, 2005, but the appellant filed the notice of appeal on November 18, 2005. That was one business day beyond the period provided in the law and the rules. See 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 filed two days late); Camp v. Ghani, TP 27,533 (RHC Jan. 27, 2003) (where appeal dismissed because filed too late); Jassiem v. The Jonathan Woodner Co., TP 27,348 (RHC June 24, 2002) (where the Commission dismissed the appeal, because it was untimely filed by one day).

IV. THE CONCLUSION

The motion to strike the notice of appeal is granted.

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON

MOTIONS FOR RECONSIDERATION

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

CERTIFICATE OF SERVICE

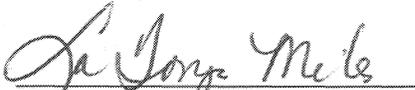
I certify that a copy of the foregoing ORDER ON MOTION TO STRIKE NOTICE OF APPEAL in TP 28,282 was mailed by priority mail, with confirmation of delivery, postage prepaid this 17th day of January, 2006, to:

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