

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 28,518

In re: 1400 Oglethorpe Street, N.W., Unit 1

Ward Four (4)

GRADY BELL
Tenant/Appellant

v.

VISION REALTY MANAGEMENT, LLC
Housing Provider/Appellee

DECISION AND ORDER

July 25, 2007

PER CURIAM: This case is on appeal from a decision and order of 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 (RHC), pursuant to the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), and the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001). The District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 (2004) also apply.

I. PROCEDURAL HISTORY

On January 24, 2006, Grady Bell filed Tenant Petition (TP) 28,518. The tenant named Vision Realty Management, LLC as the housing provider for the housing accommodation located at 1400 Oglethorpe Street, N.W., Unit 1. Record (R.) at 1-2. In the petition, the tenant stated that “[t]he apartment location of 1400 Oglethorpe St. N.W. Washington, D.C. 20011-8118 Unit 1 is not registered with the Rental Accommodations and Conversion Division. The rent

increase was larger than the amount of increase which was allowed by any applicable provision of the Rental Housing Emergency Act of 1985. The building in which my/our rental unit(s) is located is not properly registered with the Rental Accommodation and Conversion Division (R. at 3).”

On March 7, 2006, the parties appeared before the RACD and “engaged in settlement discussions.” Bell v. Vision Realty Mgmt., LLC, TP 28,518 (RACD Sept. 25, 2006) at 1. On April 24, 2006, the parties appeared at the rescheduled hearing and subsequently entered into a settlement agreement, memorialized in writing as an RACD “Praeceptum” (R. at 21). In her decision, Hearing Examiner Dorothy Greer incorporated by reference, the terms of a settlement agreement reached by the parties as follows:

The Rent Administrator will dismiss this case with prejudice. All issues having been settled and all parties, with full disclosure, have voluntarily entered into same. Tenant will pay \$300.00 per month commencing May 1, 2006. This agreement will end April 30, 2007, or until development takes place, whichever is sooner.

Id. at 2. On October 11, 2006, Mr. Bell filed a notice of appeal in the RHC. On June 8, 2007, the housing provider mailed a letter to the Commission that stated, “Vision Realty Management no longer manages [the subject housing accommodation,] [t]herefore, we are not pursuing this matter and request that our name and involvement be removed from this matter.” The Commission construed this letter as a motion requesting withdrawal as a party, however, it did not conform to the applicable regulations. Therefore the motion was denied. See Bell v. Vision Realty Mgmt., LLC, TP 28,518 (RHC June 12, 2007) at 2. On June 21, 2007, the hearing before the Commission scheduled for 2:00 p.m., proceeded at 2:18 p.m. Neither party appeared at the hearing. Accordingly, the Commission moved to dismiss the appeal upon the determination that notice was proper.

II. PROCEDURAL ISSUE ON APPEAL

- A. Whether the Commission should dismiss the appeal of an appellant who failed to appear at a hearing for failure to prosecute where the appellant was served with proper notice pursuant to the Act and the regulations.

The court has previously held that an appellant who fails to appear at a hearing before the Commission stands to have his appeal dismissed for failure to prosecute. Stancil v. District of Columbia Rental Hous. Comm'n., 806 A.2d 622 (D.C. 2002) (court of appeals affirmed RHC decision dismissing the appeal of a landlord who failed to appear at a hearing). The DCAPA states, “the proponent of a rule or order shall have the burden of proof.” D.C. OFFICIAL CODE § 2-509(b) (2001). The D.C. Court of Appeals also recognized this proposition. See Stancil, supra. Mr. Bell’s appeal is dismissed because the petitioner received adequate notice of the hearing, and did not attempt to reschedule the hearing or request a continuance in writing.

The United States Postal Service Delivery Confirmation website reflects that notice of the hearing was delivered to the appellant, Grady Bell at the address listed on the tenant petition, on May 22, 2007 at 5:01 p.m.¹ In addition to the notice of hearing, the applicable regulations for pleadings on appeal and the Commission’s contact information were also enclosed.

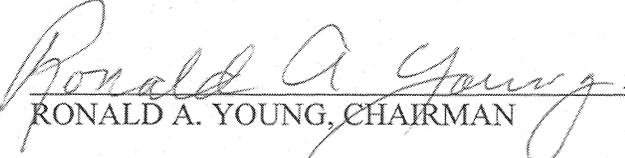
Nevertheless, Mr. Bell did not contact the Commission to request a continuance of the hearing. The notice of the hearing stated “[f]ailure of an Appellant to appear may result in the dismissal of the party’s appeal...failure of either party to appear at the scheduled time will not preclude the Commission from hearing the oral argument of the appearing party and/or disposing of the appeal (emphasis added).”

In this case, Mr. Bell was the appellant and he did not appear at the hearing. When Mr. Bell did not appear before the Commission for the hearing he lost his opportunity to make argument to support his case. He did not satisfy the requirements of the Act or the regulations.

¹ Receipt number 0306 1070 0003 0614 0605 confirms the delivery of the notice of hearing.

In Stancil, the Commission dismissed the appeal of a petitioner who failed to appear pursuant to the Commission's "inherent power to dismiss an appeal." Id. at 625. Consequently, when Mr. Bell did not satisfy his burden of persuasion in the present case, the appropriate recourse was the dismissal of the appeal. Therefore, Mr. Bell's appeal is dismissed with prejudice for his failure to appear at the hearing before the Commission.

SO ORDERED.


RONALD A. YOUNG, CHAIRMAN


DONATA L. EDWARDS, COMMISSIONER

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 hereby certify that a copy of the foregoing **Decision and Order** in TP 28,518 was mailed postage prepaid by priority mail, with delivery confirmation on this **25th day of July, 2007** to:

Grady Bell
1400 Oglethorpe St. NW
Unit 1
Washington, D.C. 20011-8118

Mario Lloyd, Managing Member
Vision Realty Management, LLC
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Columbia, MD 21045



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Contact Representative
(202) 442-8949