

**District of Columbia
Office of Administrative Hearings**

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DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS

2009 JUL 23 P 2:51

PAUL EDWARDS,
Tenant/Petitioner,

v.

CHERYL J. STEELE,
Housing Provider/Respondent.

Case No.: 2009-OAH-DHCD-0000061
Agency No.: TP 29,783
In re 1521 Independence Avenue SE

FINAL ORDER

I. Introduction

Tenant/Petitioner Paul Edwards failed to appear at a hearing that was convened to adjudicate allegations in his tenant petition of violations of the Rental Housing Act of 1985 (the "Rental Housing Act" or the "Act") by Housing Provider/Respondent Cheryl Steele. Because Tenant failed to appear at the hearing after receiving proper notice, and failed to give any explanation for his non-appearance, I dismiss this case for failure to prosecute in accord with the following Findings of Fact and Conclusions of Law.

II. Findings of Fact

1. On December 3, 2009, Tenant/Petitioner Paul Edwards filed Tenant Petition ("TP") 29,783 with the Rental Accommodations Division ("RAD") of the Department of Housing and Community Development alleging violations of the Rental Housing Act with respect to Tenant's housing accommodation at 1521 Independence Avenue SE. The tenant petition alleged that

retaliatory action had been directed against Tenant by Housing Provider for exercising Tenant's rights in violation of Section 502 of the Rental Housing Act.

2. On April 1, 2010, this administrative court issued an Order Scheduling Mediation directing the parties to appear for mediation on May 17, 2010, at 9:30 a.m., at the Office of Administrative Hearings, 441 4th Street, N.W. Neither Tenant/Petitioner nor Housing Provider appeared.

3. On June 24, 2010, this administrative court issued a Case Management Order ("CMO") directing the parties to appear for a hearing on July 23, 2010 at 1:30 p.m. A copy of the CMO was mailed to Tenant/Petitioner Paul Edwards by first class at 1521 Independence Avenue SE, Washington, DC 20003, the address Petitioner listed on the tenant petition. The CMO was not returned by USPS as undeliverable.

4. On July 16, 2010, Housing Provider filed a motion for continuance in which she states that Tenant vacated the subject property before January 2010. This administrative court held the motion to continue in abeyance.

5. The case was called for hearing at 1:30 p.m. on July 23, 2010. Tenant/Petitioner Paul Edwards did not appear. At 3:40 p.m. this administrative court noted for the record that Tenant/Petitioner did not appear. Housing Provider did not appear at the hearing.

6. Tenant submitted no explanation before or after the hearing for his failure to appear at the hearing.

III. Conclusions of Law

This matter is governed by the Rental Housing Act of 1985, D.C. Official Code §§ 41-3501.01 – 3509.07, the District of Columbia Administrative Procedure Act (DCAPA), D.C. Official Code §§ 2-501 – 510, the District of Columbia Municipal Regulations ("DCMR"), 1

DCMR 2800 – 2899, 1 DCMR 2920 – 2941, and 14 DCMR 4100 – 4399. As of October 1, 2006, the Office of Administrative Hearings has assumed jurisdiction of rental housing cases pursuant to the OAH Establishment Act, D.C. Official Code § 2-1831.03(b-1)(1).

Tenant/Petitioner was properly served by mail with the CMO issued June 24, 2010, 2008, which gave notice of the hearing on July 23, 2010. Because the CMO setting the hearing date was mailed to Tenant's last known address, the address Tenant/Petitioner listed on the tenant petition, Tenant/Petitioner received proper notice of the hearing date. D.C. Official Code § 42-3502.16(c); *Kidd Int'l Home Care, Inc. v. Prince*, 917 A.2d 1083, 1086 (D.C. 2007) (notice is proper if properly mailed and not returned to sender); *McCaskill v. D.C. Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990) (notice sent to the address provided by respondent is adequate to comply with due process); *Carroll v. D.C. Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985) (notice mailed to party at address provided by party and not returned as undeliverable was proper); *see also Dusenbery v. United States*, 534 U.S. 161, 167-71 (2002) (upholding service by certified mail although notice was not actually received). Proceeding in his absence was therefore appropriate.

In order to prosecute the tenant petition Tenant must appear at scheduled hearings. The CMO scheduling the hearing was sent to Tenant's address of record.

Although in Housing Provider's motion for continuance dated July 16, 2010, she indicates that Tenant vacated the subject property before January 2010, Tenant did not notify this administrative court that he changed his address as required by OAH Rule 2807.4, 1 DCMR 2807.4.¹

¹OAH Rule 2807.4, 1 DCMR 2807.4 provides: It is solely the obligation of a party, an authorized representative, or an attorney whose address, telephone number(s), or fax number(s), if any, have changed to promptly notify the Clerk and all other parties. Any change of address shall be filed

Because Tenant failed to appear at the hearing after receiving proper notice, and Tenant has not shown good cause for her non-appearance, this case will be dismissed with prejudice for Tenant's failure to prosecute pursuant to OAH rule 2818.1, 1 DCMR 2818.1.²

OAH rules at 1 DCMR 2818.1 provide that:

For failure of the Petitioner to prosecute or to comply with these Rules or any order of this administrative court, a Respondent may move for dismissal of an action or any of any claim against the Respondent, or the presiding Administrative Law Judge may order such dismissal on his or her own motion. Subject to the limitations of Section 2818.2, and unless otherwise specified, a dismissal under this Section, other than a dismissal for lack of jurisdiction, constitutes an adjudication on the merits.

Under OAH Rule 2818.3, 1 DCMR 2818.3, this order shall not take effect until 14 days after the date on which it is served, and shall be vacated upon the granting of a motion filed by Petitioner within that 14 day period, showing good cause why the case should not be dismissed.

IV. Order

Accordingly, it is, this 28th day of July 2010:

ORDERED, that Housing Provider/Respondent's motion for continuance is **DENIED**

nunc pro tunc; and it is further

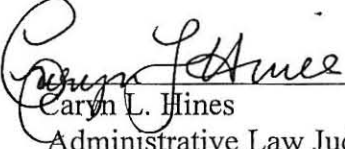
ORDERED, that TP 29,783 is **DISMISSED WITH PREJUDICE**; and it is further

with this administrative court and served upon all parties within three (3) business days of its occurrence. The information provided to this administrative court pursuant to this Rule shall be conclusively deemed to be correct and current.

² Also See *DOH v. Agape Cabbage Patch/Le Mae Early Child Dev. Ctr.*, 2001 D.C. Off. Adj. Hear. LEXIS 36 at *4 (holding that a failure to appear at a hearing justifies dismissal of the case with prejudice by analogy to D.C. Super. Ct. Civ. R 41(b)); *Cf. Stitt v. Outten*, TP 22,809 (RHC Aug. 8, 1997) at 11 (holding that hearing examiner should have dismissed with prejudice claims of petitioners who did not show at hearing); *Shannon & Luchs v. Kinney*, TP 11,086 (RHC May 8, 1984) at 1 (holding that where a party fails to appear at a hearing a motion to dismiss with prejudice should be granted in the absence of good cause); *Wayne Gardens Tenant Ass'n v. H & M Enterprises*, TP 11,845 (RHC Sept. 27, 1985) at 2 (same holding).

ORDERED that this order shall not take effect until 14 days after the date on which it is served, and shall be vacated upon the granting of a motion filed by Petitioner within that 14 day period, showing good cause why the case should not be dismissed; and it is further

ORDERED that the appeal rights of any party aggrieved by this order are set forth below.


Caryn L. Hines
Administrative Law Judge

APPEAL RIGHTS

Pursuant to D.C. Official Code §§ 2-1831.16(b) and 42-3502.16(h), any party aggrieved by a Final Order issued by the Office of Administrative Hearings may appeal the Final Order to the District of Columbia Rental Housing Commission within ten (10) business days, in accordance with the Commission's rule, 14 DCMR 3802. The ten (10) day limit shall begin to run when the order becomes final. If the Final Order is served on the parties by mail, an additional three (3) days shall be allowed, in accordance with 14 DCMR 3802.2.

Additional important information about appeals to the Rental Housing Commission may be found in the Commission's rules, 14 DCMR 3800 et seq., or you may contact the Commission at the following address:

District of Columbia Rental Housing Commission
441 4th Street NW
Suite 1140
Washington, DC 20001
(202) 442-8949

Certificate of Service:

By First Class Mail (Postage Prepaid):

Paul Edwards
1521 Independence Avenue SE
Washington, DC 20003

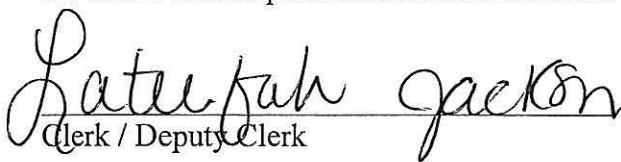
Cheryl J. Steele
4050 Chesapeake Street NW
Washington, DC 20016

By Inter-Agency Mail:

District of Columbia Rental Housing Commission
441 4th Street NW
Suite 1140 North
Washington, DC 20001

Theresa Lewis, Acting Rent Administrator
Rental Accommodations Division
Department of Housing and Community Development
1800 Martin Luther King, Jr., Avenue SE
Washington, DC 20020

I hereby certify that on 7-28, 2010, this document was caused to be served upon the above-named parties at the addresses and by the means stated.


Clerk / Deputy Clerk