

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
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DEC 17 P 3:36

PAMELA A. GREEN,
Tenant/Petitioner,

v.

JOEL TRUITT MANAGEMENT, INC.,
Housing Provider/Respondent.

Case No.: RH-TP-08-29260

In re 3848 South Capitol Street, SE,
Unit 304

FINAL ORDER

Tenant/Petitioner, Pamela A. Green, failed to appear for a scheduled hearing on November 20, 2008, at 9:30 a.m. after being personally served notice on September 11, 2008. On November 20, 2008, at 1:47 p.m., Tenant filed a request for a continuance stating, “[a]pologize for the time mixup.” Tenant gave no reason as to why she was unable to attend the hearing nor why she needed a continuance. On November 24, 2008, this administrative court issued to Tenant an order directing her to show cause in writing by December 5, 2008, why this case should not be dismissed for failure to prosecute. As of the date of this order, Tenant has filed no submission in response to this administrative court’s order. Because Tenant failed to appear to prosecute and because Tenant did not respond to this administrative court’s order, I will grant Housing Provider’s motion to dismiss the tenant petition with prejudice in accord with the following Findings of Fact and Conclusions of Law.

I. Findings of Fact

1. On April 17, 2008, Tenant filed tenant petition (“TP”) 29,260 with the Rental Accommodations Division of the Department of Housing and Community Development asserting violations of the Rental Housing Act of 1985 against Housing Provider Joel Truitt Management, Inc. alleging that there was no proper 30 day notice of rent increase before an increase was charged and that a rent increase was made while her unit was not in substantial compliance with D.C. Housing Regulations.

2. The Case Management Order (“CMO”) issued on May 9, 2008, scheduled a hearing in this matter for June 5, 2008. On May 21, 2008, Housing Provider, through counsel Morris Battino, Esquire moved for a continuance of the hearing. On June 3, 2008, this administrative court granted Housing Provider’s motion and set the hearing for August 7, 2008.

3. The parties appeared for a hearing on August 7, 2008, and agreed to mediate the matter with Administrative Law Judge Cobbs. The parties held a second mediation session on September 11, 2008, but were unsuccessful in resolving the dispute. At the conclusion of the second mediation session, this administrative court convened and a new hearing date was set for November 20, 2008, at 9:30 a.m. and both parties were handed a Notice of New Hearing Date.

4. A hearing was convened on November 20, 2008 at 9:30 a.m. at which Housing Provider and Morris Battino, Esquire counsel for Housing Provider appeared.

5. At the November 20, 2008, hearing, Housing Provider, through counsel made a motion to dismiss this matter for failure to prosecute. This motion was held in abeyance.

6. On November 20, 2008, four hours after the time for the hearing, Tenant submitted a motion to set a new hearing because of “the time mixup.” On November 24, 2008, this administrative court issued to Tenant an order directing her to show cause in writing by December 5, 2008, why this case should not be dismissed for failure to prosecute. Tenant did not respond to this order.

II. Conclusions of Law

This matter is governed by the Rental Housing Act of 1985 (the “Act”), D.C. Official Code §§ 42-3501.01 – 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, OAH has assumed jurisdiction of rental housing cases pursuant to the OAH Establishment Act, D.C. Official Code § 2-1831.03(b-1)(1).

In order to prosecute the tenant petition Tenant must appear at the scheduled hearing. Tenant failed to appear at the hearing nor did Tenant submit a response to this administrative court’s order to show good cause for her non-appearance.¹ Therefore, this matter is dismissed with prejudice. *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

¹ Tenant submitted a timely motion for a request for a new hearing date on November 20, 2008, but did not explain her non-appearance at the hearing on November 20, 2008. Tenant was non-responsive to this administrative court’s order dated November 25, 2008, that directed Tenant to explain her non-appearance. Because Tenant failed twice to present evidence of good cause as to her non-appearance at the hearing, there is no need to apply the analysis of *Frausto v. U.S. Dep’t of Commerce*, 926 A.2d 151 (D.C. 2007) which is designed to elicit evidence of good cause as a defense to dismissal of the case for failure to prosecute.

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).

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.

Tenant failed to appear at the time of the scheduled hearing on November 20, 2008, and Tenant did not respond to this administrative court's order of November 24, 2008, by December 5, 2008. Therefore, this matter is involuntarily dismissed with prejudice pursuant to OAH rule 1 DCMR 2818.1 for Tenant's failure to prosecute.

III. Order

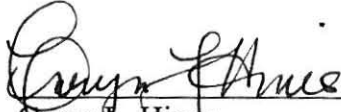
Accordingly, it is this 17th day of **December, 2008,**

ORDERED that Housing Provider's motion to dismiss the tenant petition is **GRANTED**; and it is further

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.

ORDERED, that TP 29,260 is **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Final 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 time limit shall begin to run when the order becomes final. If the Order is served on the parties by mail, an additional five (5) business days shall be allowed, in accordance with 1 DCMR 2811.5.

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
941 North Capitol Street, NE
Suite 9200
Washington, DC 20002
(202) 442-8949

Certificate of Service

**By Priority Mail with Delivery
Confirmation (Postage Paid) to:**

Pamela A. Green
3848 South Capitol Street, SE
Suite 101
Washington, DC 20032

Morris R. Battino, Esquire
Suite 100
1200 Perry Street, NE
Washington, DC 20017

By Inter-Agency Mail:

District of Columbia Rental Housing Commission
941 North Capitol Street, NE, Suite 9200
Washington, DC 20002

Keith Anderson, Acting Rent Administrator
District of Columbia Department of Housing and Community Development
Housing Regulation Administration
941 North Capitol Street, NE, Suite 7100
Washington, DC 20002

I hereby certify that on Dec 17, 2008,
this document was caused to be served upon the
above-named parties at the addresses and by the means stated.

Benedicta Rhames
Clerk / Deputy Clerk