

**DISTRICT OF COLUMBIA**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
941 North Capitol Street, NE, Suite 9100  
Washington, DC 20002  
TEL: (202) 442-8167  
FAX: (202) 442-9451

7008 DEC 19 A 10: 17

ALETHEA SMITH-WITHERS,  
Tenant/Petitioner,

v.

FORTY ACRES REALTY, LLC  
& ALVIN E. GROSS, JR.,  
Housing Providers/Respondents.

Case No.: RH-TP-08-29391  
*In re* 1725 Douglas Street, NE

---

**FINAL ORDER**

Tenant/Petitioner, Alethea Smith-Withers, failed to appear for a scheduled hearing on November 3, 2008, at 9:30 a.m. after receiving notice at the address Tenant gave to this administrative court.<sup>1</sup> On November 5, 2008, this administrative court issued an order directing Tenant to show cause why this matter should not be dismissed for failure to prosecute within 15 calendar days of the service date of the order. 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, the tenant petition is dismissed with prejudice in accord with the following Findings of Fact and Conclusions of Law.

---

<sup>1</sup> US Postal Service confirms delivery to Tenant/Petitioner on October 3, 2008, with delivery confirmation receipt number 0307333000084448797.

**I. Findings of Fact**

1. On August 12, 2008, Tenant filed TP 29,391 with the Rental Accommodations Division of the Department of Housing and Community Development asserting violations of the Rental Housing Act of 1985 against Housing Providers Forty Acres Realty, LLC and Alvin E. Gross, Jr., alleging that: 1) the services and facilities provided as part of the rent or tenancy have been substantially reduced; 2) Housing Providers have taken retaliatory action against her in violation of Section 502 of the Act; and 3) a Notice to Vacate has been served on her which violates Section 501 of the Act.

2. The Case Management Order (“CMO”) issued on October 2, 2008, scheduled a hearing in this matter for November 3, 2008.

3. A hearing was convened on November 3, 2008 at 9:30 a.m. at which neither Tenant nor Housing Providers appeared.

4. On November 5, 2008, this administrative court issued to Tenant an order directing her to show cause in writing within 15 calendar days of the service date of the Order explaining why this matter 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).

The DCAPA provides that “In contested cases ... the proponent of a rule or order shall have the burden of proof. D.C. Official Code § 2-509(b). Tenant/Petitioner has the burden of proof in this case.

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. 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 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 3, 2008, and Tenant did not respond to this administrative court's order of November 5, 2008. Therefore, this matter is involuntarily dismissed with prejudice pursuant to OAH rule 1 DCMR 2818.1 for Tenant's failure to prosecute.

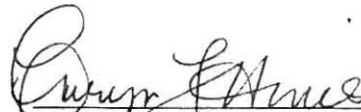
### III. Order

Accordingly, it is this 18<sup>th</sup> day of **December, 2008**,

**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 29,391 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:**

Alethea Smith-Withers  
1725 Douglas Street, NE  
Washington, DC 20018

Forty Acres Realty, LLC  
4401 A Connecticut Avenue, NW  
Suite 207  
Washington, DC 20008

Alvin E. Gross, Jr.  
6905 Whittier Boulevard  
Bethesda, MD 20817

**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. 19, 2008,  
this document was caused to be served upon the  
above-named parties at the addresses and by the means stated.

Benedetta Phames  
Clerk / Deputy Clerk