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**OFFICE OF ADMINISTRATIVE HEARINGS**  
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DISTRICT OF COLUMBIA  
OFFICE OF  
ADMINISTRATIVE HEARINGS

2009 JUN 26 A 9:00

RHODE ISLAND GARDENS TENANTS'  
ASSOCIATION

Tenants/Petitioners

v.

DARO REALTY

Housing Provider/Respondent

Case No.: RH-TP-08-29407

*In re* 230 Rhode Island Avenue NE

**FINAL ORDER**

**I. Introduction**

On August 25, 2008, Tenant Representative Glenn Miller filed Tenant Petition (TP) 29,407 on behalf of the Rhode Island Gardens Tenants' Association (Association) against Housing Provider/Respondent Daro Realty alleging that Housing Provider violated the Rental Housing Act of 1985<sup>1</sup> by increasing the rent for rental units while the units were not in substantial compliance with the housing regulations; permanently eliminating services and/or facilities provided in connection with rental units; and substantially reducing services and/or facilities provided in connection with rental units.

Based on the record, I am dismissing this matter for Tenants' failure to prosecute.

<sup>1</sup> Rental Housing Act of 1985 (D.C. Official Code §§ 42-3501.01 *et seq.*) ("Rental Housing Act" or "Act").

## **II. Findings of Fact**

1. The housing accommodation at issue is located at 230 Rhode Island Avenue, NE.
2. On August 25, 2008, Tenant Representative Glenn Miller initiated this matter by filing TP 29,407 on behalf of the Association.
3. By Order served on October 31, 2008, the Association was directed to identify its members and file certain information to assist this administrative court in determining whether the Association would be listed in the case caption as Tenant/Petitioner. The Order directed the Association to file and serve the information by November 17, 2008, and appear for a conference on the Association's status on November 24, 2008.
4. Tenants Glenn Miller, Jessica Graves, Jasper Washington, and Rachel Storey appeared for the status conference on November 24, 2008. Housing Provider appeared with counsel.
5. Debbie Smith also appeared for the status conference. Ms. Smith identified herself as a former Advisory Neighborhood Commission (ANC) Commissioner and stated that her role in the case would be to provide information as an ANC Commissioner. Ms. Smith is not a tenant in this matter and did not claim to represent the Association.
6. Because the page of the Order with the date by which the Association was to file and serve information pertaining to its membership and status was not served on Tenants, Tenants did not submit the information before appearing on November 24, 2008. By Order served on November 25, 2006, the time for filing the information was enlarged

until December 22, 2008, and the parties were ordered to either submit a mutually agreeable date for mediation or appear for a hearing on February 23, 2009, at 9:30 a.m.

7. No mediation date was filed. Tenants did not file the information as ordered.
8. On Friday, February 20, 2009, Tenant Jasper Washington filed a motion to continue the hearing scheduled for Monday, February 23, 2009. The motion also was signed by Debbie Smith. In support of the motion, Mr. Washington stated that the Association was without representation because of the “recent departure and change in leadership/representation. All of the original board members are no longer active and have moved/relocated. A Continuance is needed to elect and certify new leadership and representation.” The motion was not served on counsel for Housing Provider.
9. On February 23, 2009, Housing Provider appeared for the scheduled hearing. No tenant appeared. Debbie Smith, the former ANC Commissioner, appeared and informed this administrative court that the Association has no board, no members, and exists on paper only. Ms. Smith requested a continuance to allow the Association to reorganize and determine whether it would pursue complaints against Housing Provider. Ms. Smith stated that Tenant Jasper Washington, who filed the motion to continue, did not appear for unspecified health reasons
10. Housing Provider moved to dismiss this case.

### **III. Conclusions of Law**

This matter is governed by the Rental Housing Act; substantive rules implementing the Rental Housing Act at 14 DCMR 4100 - 4399; the Office of Administrative Hearings

Establishment Act at D.C. Official Code § 2-1831.03(b-1)(1), which authorizes OAH to adjudicate rental housing cases; the District of Columbia Administrative Procedure Act (D.C. Official Code §§ 2-501 *et seq.*; and OAH procedural rules at 1 DCMR 2800 *et seq.* and 1 DCMR 2920 *et seq.* Tenants have the burden of proving the claims asserted.<sup>2</sup>

OAH Rules 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 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.<sup>3</sup>

Any order of involuntary dismissal entered pursuant to Section 2818.1 or on the presiding Administrative Law Judge's own motion shall not take effect until fourteen (14) days after the date on which it is served, and shall be vacated upon the granting of a motion filed by the Petitioner within such fourteen (14) day period showing good cause why the case should not be dismissed.<sup>4</sup>

The evidence shows that this matter should be dismissed for failure to prosecute. The Association failed to comply with the order of this administrative court to file information critical to determining its membership and status in this matter. No one with authority to prosecute this case appeared for the scheduled evidentiary hearing. While Ms. Smith appeared, she is neither a tenant nor a person authorized to represent tenants under the rules of this administrative court.<sup>5</sup> Moreover, Ms. Smith does not claim to be authorized to represent the Association. While Mr. Washington filed a motion for continuance, the grounds asserted

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<sup>2</sup> D.C. Official Code § 2-509(b); 1 DCMR 2932.1.

<sup>3</sup> 1 DCMR 2818.1.

<sup>4</sup> 1 DCMR 2818.2.

<sup>5</sup> 1 DCMR 2838, 2839.

indicate that the Association that initiated this matter no longer exists, as Mr. Washington has reported that the Association has no board members or leadership. Ms. Smith has reported that the Association has no members. In essence, an indefinite continuance has been requested to allow the organization of a new tenant association, with a new board, and new members who may or may not decide to prosecute this case. The evidence shows that this matter was initiated on behalf of a tenant association that has disbanded since the petition was filed. The motion to continue is denied and this matter is dismissed with prejudice for failure to prosecute in accordance with OAH Rule 2818.<sup>6</sup>

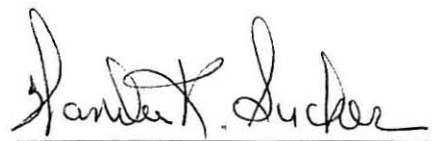
**IV. Order**

Therefore, it is, this 25<sup>th</sup> day of June, 2009:

**ORDERED**, that Case No. RH-TP-08-29407 is **DISMISSED WITH PREJUDICE**; and  
it is further

**ORDERED**, that any affected tenant may file a motion to vacate this Order in  
accordance with OAH Rule 2818.2; and it is further

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

  
\_\_\_\_\_  
Wanda R. Tucker  
Administrative Law Judge

<sup>6</sup> 1 DCMR 2818.1, 2818.2.

## 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 three (3) business 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  
941 North Capitol Street, N.E.  
Suite 9200  
Washington, D.C. 20002  
(202) 442-8949

**Certificate of Service:  
By Priority Mail/ Delivery Confirmation  
(Postage Paid)**

Glenn Miller  
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**By Interagency Mail**

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Suite 9200  
Washington, DC 20002

Keith Anderson  
Acting Rent Administrator  
Rental Accommodations Division  
Department of Housing and Community Development  
1800 Martin Luther King Avenue, SE  
Washington, DC 20020

I hereby certify that on 6-26, 2009 this document was caused to be served upon the above-named parties at the address(es) and by the means stated.

Benedicta Rhames  
Clerk / Deputy Clerk