

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
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Washington, DC 20002
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2009 APR 17 A 9:07

ANTHONY L. OLIVER,
Tenant/Petitioner,

v.

THE BARAC COMPANY
C/o Steve Bruno,
Housing Provider/Respondent.

Case No.: RH-TP-08-29428
In re 1305 10th Street NW
Unit 103

FINAL ORDER

Tenant, Anthony Oliver, failed to appear for a scheduled hearing after receiving due notice and failed to respond to an Order To Show Cause why this case should not be dismissed for lack of prosecution. Therefore, I grant Housing Provider's motion to dismiss the tenant petition in accordance with the following Findings of Fact and Conclusions of Law.

I. Findings of Fact

1. On September 11, 2008, Tenant/Petitioner Anthony Oliver filed Tenant Petition ("TP") 29,428 with the Rental Accommodations Division of the Department of Housing and Community Development ("RAD") asserting violations of the Rental Housing Act of 1985 (the "Act") by Housing Provider/Respondent the Barac Company, at the housing accommodation, 1305 10th Street, NW, Unit 103.

2. On November 4, 2008, this administrative court issued a Case Management Order (“CMO”) setting the hearing for December 2, 2008, at 9:30 a.m. Tenant, counsel for Housing Provider, Patricia Millerioux, Esquire and Housing Provider appeared for the hearing on December 2, 2008.

3. On December 2, 2008, Tenant, Housing Provider, and counsel for Housing Provider engaged in mediation with Administrative Law Judge Margaret Mangan. The parties did not settle the dispute.

4. On December 2, 2008, after the failed mediation Tenant was given a copy of the notice setting the new hearing for January 14, 2009.

5. On December 12, 2008, Housing Provider, through counsel filed a motion to dismiss asserting that the claims had been fully adjudicated in the Superior Court of the District of Columbia Landlord Tenant Branch. On January 8, 2009, this administrative court issued an order converting the January 14, 2009, evidentiary hearing to a hearing on the motion to dismiss. On January 14, 2009, a hearing on Housing Provider’s motion to dismiss was held and Housing Provider, counsel for Housing Provider and Tenant appeared. I held Housing Provider’s motion to dismiss in abeyance. This administrative court set February 19, 2009, as the date for the evidentiary hearing. This administrative court issued a notice for rescheduling on February 19,

2009, changing the hearing date to March 11, 2009. The notice was not returned to the Office of Administrative Hearings (“OAH”) as undeliverable.¹

6. Housing Provider filed a renewed motion to dismiss on February 26, 2009. On March 11, 2009, Tenant did not appear for the evidentiary hearing. Housing Provider and Housing Provider’s counsel did appear.

7. On March 12, 2009, this administrative court issued an Order To Show Cause directing Tenant to submit a statement by March 23, 2009 as to why the tenant petition should not be dismissed for Tenant’s failure to appear.

8. The Order To Show Cause was sent to Tenant by Priority Mail/Delivery Confirmation at the address listed in the tenant petition, 1305 10th Street, NW, Unit 103, Washington, DC 20001. Records from the website of the U.S. Postal Service indicate delivery of the Order to Show Cause at 3:50 p.m. on March 14, 2009.² The Order to Show Cause was not returned as undeliverable.

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

¹United States Postal Service records indicate delivery of the notice to Anthony Oliver at the address listed in the tenant petition on February 21, 2009, at 3:56 p.m. with delivery confirmation number 0307 3330 0000 8444 7899.

² U.S. Postal Service delivery confirmation receipt number 0307 1790 0004 2496 8156.

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).

Tenant/Petitioner was properly served by mail with the notice of rescheduling issued February 19, 2009, which gave notice of the hearing on March 11, 2009. Because the notice of rescheduling 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. *Dusenbery v. United States*, 534 U.S. 161, 167-71 (2002); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep’t of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep’t of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985).

OAH Rule 2818.3, 1 DCMR 2818.3, provides, in part:

Unless otherwise required by statute, these Rules or an order of this administrative court, where counsel, an authorized representative, or an unrepresented party fails, without good cause, to appear at a hearing, or a pretrial, settlement, or status conference, the presiding Administrative Law Judge may dismiss the case or enter an order of default in accordance with D.C. Superior Court Civil Rule 39-I.³

This court issued an Order to Show Cause directing Tenant/Petitioner to submit evidence of good cause for his failure to appear at the March 11, 2009, hearing which was due to this court


³ Super Ct. Civ. R. 39-I(b) provides: “When an action is called for trial and the party seeking affirmative relief fails to respond, an adversary may have the claim dismissed, with or without prejudice as the court may decide or the court may in a proper case, conduct a trial or other proceeding.”

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

ORDERED, that TP 29,428 is **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that, pursuant to OAH Rule 2818.3, 1 DCMR 2818.3, this Order shall not become final until fourteen (14) days after the date of service of this Order, and shall be vacated upon the filing of a motion by Tenant/Petitioner within this fourteen day period showing good cause why this case should not be 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 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
941 North Capitol Street, NE
Suite 9200
Washington, D.C. 20002
(202) 442-8949

Certificate of Service:

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

Anthony Linton Oliver
1305 10th Street NW
Unit 103
Washington, DC 20001

Edward L. Pugh, Esquire
Loewinger & Brand, PLLC
471 H Street NW
Washington, DC 20001

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
1800 Martin Luther King Jr. Avenue SE
Washington, DC 20020

I hereby certify that on 4-17,
2009, this document was caused to be served
upon the above-named parties at the
addresses and by the means stated.

Benedetta Rhames

Clerk / Deputy Clerk

