

DISTRICT OF COLUMBIA
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OFFICE OF
ADMINISTRATIVE HEARINGS
2009 MAR 31 A 10:47

DEVONNE HORSLEY,
Tenant/Petitioner,

v.

FELIX & ERNESTINE CROMATRIE,
Housing Providers/Respondents.

Case No.: RH-TP-08-29450

In re: 412 Tennessee Avenue, NE., Unit 1

FINAL ORDER

I. Introduction

On October 2, 2008, Tenant/Petitioner Devonne Horsley filed Tenant Petition (TP) 29,450 alleging that (1) his rent was increased in an amount higher than allowed by the Rental Housing Act (“RHA”); (2) the building is not properly registered with the Rental Accommodations Division (“RAD”) of the Department of Housing and Community Development (“DCHD”); (3) Housing Provider did not file the correct rent increase forms with the RAD; and (4) services and facilities in connection with his unit were substantially reduced.

This matter was scheduled for a hearing on February 17, 2009. Housing Provider Ernestine Cromatrie appeared at the hearing and was represented by Clarissa Thomas Edwards, Esquire. Tenant failed to appear at the hearing or to request a continuance; therefore, I am dismissing this case with prejudice in accord with the following Findings of Fact and Conclusions of Law.

II. Findings of Fact

1. The housing accommodation at issue in this petition is located at 412 Tennessee Avenue, NE, Unit 1, in the District of Columbia.
2. On November 24, 2008, I issued a Case Management Order (“CMO”) scheduling this matter for a hearing on January 7, 2009. The Order was mailed to Tenant at the address he provided in his Tenant Petition by priority mail with delivery confirmation, receipt number 0306-3030-0001-8018-5712. The United States Postal Service website reflects the Order was delivered on November 25, 2008.
3. On December 31, 2008, I granted Housing Provider’s motion to continue the hearing. An Order granting the motion and rescheduling the hearing for February 17, 2009, at 9:30 a.m. was mailed to Tenant by priority mail with delivery confirmation, receipt number 0307-1790-0004-2496-9382. The United States Postal Service website reflects the Order was delivered on January 3, 2009.
4. Housing Provider and her counsel appeared for the hearing on February 17, 2009. Tenant failed to appear at the hearing or to request a postponement of the hearing. Housing Provider requested the petition in this matter be dismissed.

III. Conclusions of Law

This matter is governed by the Rental Housing Act of 1985 (D.C. Official Code §§ 42-3501.01 *et. seq.*) (“Rental Housing Act” or “The Act”), Chapters 41-43 of 14 District of Columbia Municipal Regulations (“DCMR”), the District of Columbia Administrative Procedure

Act (D.C. Official Code §§ 2-501 *et. seq.*) (“DCAPA”), and OAH Rules (1 DCMR 2800 *et. seq.* and 1 DCMR 2920 *et. seq.*).

The Rental Housing Act provides that “notice of time and the place of the hearing shall be furnished to the parties by certified mail or other form of service which assures delivery at least 15 days before commencement of the hearing.” D.C. Official Code § 42-3502.16(c). The CMO scheduling the hearing was delivered to the address Tenant provided more than fifteen days prior to the scheduled hearing. Accordingly, Tenant 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. D.C. Dep’t of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. D.C. Dep’t of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985).

The rules of this administrative court provide:

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 issue an order of default in accordance with D.C. Superior Court Rule 39-I.

1 DCMR 2818.3.

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 has the burden of proof in this case. Because Tenant failed to appear at the hearing after receiving proper notice, this case 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, where neither party appears at a hearing, a failure to appear by the party with the burden of proof justifies dismissal of the case

with prejudice by analogy to D.C. Super. Ct. Civ. R. 41(b)); *Cf. McFadden v. Fullington*, TP 27,122 (RHC Sept. 18, 2002) (dismissing appeal where neither party appeared at a hearing because the appellant had the burden of proof).

Under OAH Rule 2818.2 (1 DCMR 2818.2), 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 Tenant/Petitioner within that 14 day period, showing good cause why the case should not be dismissed.


IV. **ORDER**

Accordingly, it is, this 31st day of March 2009:

ORDERED, that this case is **DISMISSED WITH PREJUDICE**; 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; and it is further

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


Erika L. Pierson
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, N.E.
Suite 9200
Washington, D.C. 20002
(202) 442-8949

Certificate of Service:

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

Devonne Horsley
412 Tennessee Avenue, NE
Unit 1
Washington, DC 20002

Clarissa Thomas Edwards, Esquire
Law Office of C. Thomas, Ctd
405 8th Street, NE
Washington, DC 20002

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
Rental Accommodations Division
Department of Housing and Community
Development
1800 Martin Luther King Jr. Ave., SE
Washington, DC 20020

I hereby certify that on 3-31,
2009, this document was caused to be served
upon the above-named parties at the
addresses and by the means stated.


Clerk / Deputy Clerk