

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

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2009 APR -8 A 9:41

CHERRY S. CADOGAN,
Tenant/Petitioner,

v.

FORT CHAPLIN PARK LIMITED
PARTNERSHIP,
Housing Provider/Respondent.

Case No.: RH-TP-08-29455
In re 4241 Blaine Street NE
Unit 02

FINAL ORDER

Tenant, Cherry Cadogan, 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 will dismiss the tenant petition in accordance with the following Findings of Fact and Conclusions of Law.

I. Findings of Fact

On October 9, 2008, Tenant/Petitioner Cherry Cadogan filed Tenant Petition ("TP") 29,455 with the Rental Accommodations Division of the Department of Housing and Community Development asserting violations of the Rental Housing Act of 1985 by Housing Provider/Respondent Fort Chaplin Park Limited Partnership, at the Housing Accommodation, 4241 Blaine Street NE, Unit 02.

On December 10, 2008, this administrative court issued a Case Management Order (“CMO”) setting the hearing for January 12, 2009 at 9:30 a.m. The CMO was sent to Tenant/Petitioner by Priority Mail/Delivery Confirmation at the address listed in the tenant petition, 4241 Blaine Street NE Unit 02, Washington, DC 20019. The United States Postal Service web site reported delivery confirmation at 5:32 p.m. on December 11, 2008.¹ The CMO was not returned as undeliverable.

On January 12, 2009, counsel for Housing Provider, John Raftery, Esq., Housing Provider’s property manager and a witness for Housing Provider appeared at the hearing. Tenant/Petitioner did not appear. Housing Provider, through counsel moved to dismiss this case with prejudice for lack of prosecution. I took Housing Provider’s motion under consideration.

On January 12, 2009, this administrative court issued an Order To Show Cause directing Tenant to “show cause why this case should not be dismissed with prejudice for lack of prosecution and Tenant’s failure to attend the scheduled hearing.” The Order To Show Cause was sent to Tenant by Priority Mail/Delivery Confirmation at the address listed in the tenant petition, 4241 Blaine Street NE, Unit 02, Washington, DC 20019. Records from the United States Postal Service website indicate delivery of the Order to Show Cause at 3:01 p.m. on January 13, 2009.² The Order To Show Cause was not returned as undeliverable.

¹ U.S. Postal Service delivery confirmation receipt number 0303 2460 0001 2370 6908.

² U.S. Postal Service delivery confirmation receipt number 0307 3330 0000 8444 9435.

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, the Office of Administrative Hearings (“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 CMO issued December 10, 2008, which gave notice of the hearing on January 12, 2009. Because the CMO setting the hearing date 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 January 12, 2009, hearing which was due to this court no later than January 30, 2009. As of the date of this order, Tenant/Petitioner failed to submit any evidence as directed by the Order to Show Cause. Therefore, Housing Provider's motion to dismiss for failure to prosecute is granted.

III. Order

Accordingly, it is this 8th day of **April, 2009**,

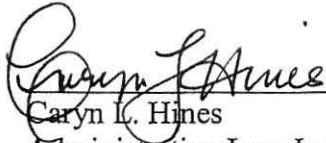
ORDERED that Housing Provider's motion to dismiss the tenant petition is **GRANTED**; and it is further

ORDERED, that TP 29,455 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

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 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:**

Cherry S. Cadogan
4241 Blaine Street NE
Unit 02
Washington, DC 20019

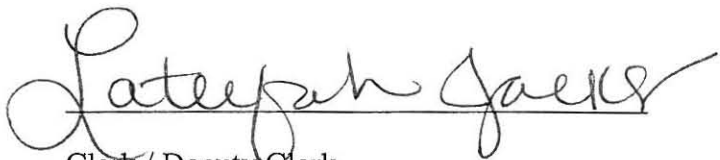
John Raftery, Esquire
Deckelbaum Ogens & Raftery, Chtd.
3 Bethesda Metro Center
Suite 200
Bethesda, MD 20814

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 48,
2009, this document was caused to be served
upon the above-named parties at the
addresses and by the means stated.


Clerk / Deputy Clerk