

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

2009 FEB -6 P 2: 56

JUANETT T. DAVIS,
Tenant/Petitioner,

v.

CECIL NILES,
Housing Provider/Respondent.

Case No.: RH-TP-08-29457
In re 315 Elm Street SW

FINAL ORDER

On October 10, 2008, Petitioner Juanett T. Davis filed Tenant Petition (TP) 29,247 against Respondent Cecil Niles with the Rent Administrator alleging violations of the Rental Housing Act of 1985 at Petitioner's housing accommodation, 315 Elm Street SW. As of October 1, 2006, the Office of Administrative Hearings (OAH) holds hearings and issues decisions in cases previously heard and decided by the Rent Administrator. D.C. Official Code § 2-1831.03(b-1)(1).

On January 5, 2009, OAH issued an Order scheduling a hearing in this matter for February 11, 2009, at 9:30 a.m. On January 22, 2009, Petitioner, filed a submission stating that as a result of a decision in the Superior Court of the District of Columbia Landlord and Tenant Branch, "I withdraw my tenant petition." I construe Petitioner's submission to be a motion for voluntary dismissal under the OAH rules.

Tenant's motion was rejected by the clerk of this administrative court because it did not contain a certificate of service on Housing Provider as required by this court's rules.¹ Notwithstanding this oversight, I will grant Tenant's motion because dismissal of this matter will not prejudice Housing Provider and will avoid needless inconvenience to the parties and this administrative court.²

OAH rules at 1 DCMR 2817.1 and 2817.4 provide that:

A petitioner may file a summary motion for voluntary dismissal of any action, or any claim asserted in an action, at any time . . . and the presiding Administrative Law Judge may grant a summary motion for voluntary dismissal without awaiting a response from the respondent.

...

Unless otherwise provided by statute, these rules or an order of this administrative court, a dismissal under this rule is without prejudice unless otherwise stipulated by the parties

Tenant/Petitioner has moved, voluntarily, to dismiss this matter, without prejudice. There is no statute, rule, or order of this administrative court prohibiting voluntary dismissal of this matter without prejudice. The parties have not stipulated to dismissal with prejudice. I am granting Petitioner's motion. 1 DCMR 2717.1 and 2817.4. If Respondent/Housing Provider

¹ OAH Rule 2928.6, 1 District of Columbia Municipal Regulations (DCMR) 2928.6, prescribes that all documents filed with the Office of Administrative Hearings shall be served on the other parties the same day they are filed with OAH. Rule 2928.7, 1 DCMR 2928.7, prescribes:

A certificate of service shall be filed with every document filed with the Office of Administrative Hearings. The certificate of service shall state the date of service, the persons served, the address at which service was made, and the manner of service.

² A copy of Tenant's submission will be served on Housing Provider together with this Final Order. If Housing Provider has any objection to this Final Order he may file a motion for reconsideration, as directed in the Order below.

objects to any aspect of this Order granting Petitioner's motion for voluntary dismissal, without prejudice, Respondent may file a motion for reconsideration within ten (10) days of the date of service of this Order. 1 DCMR 2817.2 and 2932.

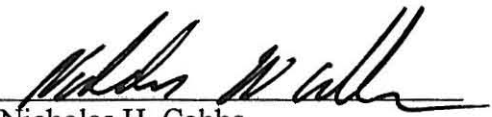
Therefore, it is this 6th day of February, 2009:

ORDERED, that Petitioner's motion for voluntary dismissal, without prejudice, is hereby **GRANTED**; and it is further

ORDERED, that Case No. RH-TP-08-29457 is hereby **DISMISSED WITHOUT PREJUDICE**; and it is further

ORDERED, that if the Respondent objects to any aspect of this Order granting Petitioner's motion for voluntary dismissal, without prejudice, the Respondent may file a motion for reconsideration within ten (10) days of the date of this Order; and it is further

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


Nicholas H. Cobbs
Administrative Law Judge

MOTIONS FOR RECONSIDERATION

Any party served with a final order may file a motion for reconsideration within ten (10) days of service of the final order in accordance with 1 DCMR 2937. When the final order is served by mail, five (5) days are added to the 10 day period in accordance with 1 DCMR 2811.5.

A motion for reconsideration shall be granted only if there has been an intervening change in the law; if new evidence has been discovered that previously was not reasonably available to the party seeking reconsideration; if there is a clear error of law in the final order; if the final order contains typographical, numerical, or technical errors; or if a party shows that there was a good reason for not attending the hearing.

The Administrative Law Judge has thirty (30) days to decide a motion for reconsideration. If a timely motion for reconsideration of a final order is filed, the time to appeal shall not begin to run until the motion for reconsideration is decided or denied by operation of law. If the Judge has not ruled on the motion for reconsideration and 30 days have passed, the motion is automatically denied and the 10 day period for filing an appeal to the Rental Housing Commission begins to run.

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 after service of the final order, in accordance with the Commission's rule, 14 DCMR 3802. 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 / Delivery Confirmation
(Postage Paid):**

Juanett T. Davis
2120 4th Avenue, Apt. 6
Los Angeles, CA 90018

Cecil Niles
7940 Orchid Street NW
Washington, DC 20012

I hereby certify that on 2-6,
2009, this document was caused to be served
upon the above-named parties at the
addresses and by the means stated.

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


Clerk / Deputy Clerk