

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

CI 20,784

In re: 1301 Harvard St., N.W.

Ward One (1)

HARVARD STREET, L.L.C.  
Housing Provider

v.

TENANTS OF 1301 HARVARD STREET, N.W.  
Tenants

**DECISION AND ORDER**

**December 15, 2005**

**BANKS, CHAIRPERSON.** This case is on appeal to the Rental Housing Commission from a decision and order issued by the Rent Administrator, based on a petition filed in the Rental Accommodations and Conversion Division (RACD). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 (2004), govern the proceedings.

**I. THE PROCEDURES**

On April 12, 2003, David R. Cormier signed, as Housing Provider or agent, a capital improvement petition, which became a part of the official files of RACD.<sup>1</sup> The property for the capital improvements was 1301 Harvard Street, N.W., which had six (6)

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<sup>1</sup> The capital improvement petition did not have a date file stamp on it.

rental units. The capital improvements were new windows to reduce drafts and to abate lead based paint. The estimated cost for the entire housing accommodation was \$25,000.00, and the surcharge on the rent was estimated to be \$121.00 per rental unit.<sup>2</sup> On October 20, 2003, Hearing Examiner Keith A. Anderson held the hearing on the capital improvement petition and issued the decision and order on May 21, 2004. On June 9, 2004, the Housing Provider filed a motion for reconsideration, which indicated error in the decision, when the hearing examiner found the Housing Provider did not request an inspection before filing the capital improvement petition. In addition, the Housing Provider submitted proof of the need for new water lines based on lead in the drinking water. The Tenants did not oppose the motion. On June 23, 2004, the hearing examiner issued a decision and order which granted the motion for reconsideration. On March 16, 2005, the hearing examiner issued a de novo decision and order. R. 65.

Pursuant to D.C. OFFICIAL CODE § 42-3502.16(h) (2001) and 14 DCMR § 3808 (2004), on April 25, 2005, the Commission issued notice that it initiated review of the Rent Administrator's decision and order, and held its hearing on November 29, 2005.

## II. THE ISSUES

The issues raised in the Commission's notice of initiated review were:

- A. Whether the hearing examiner erred by holding a hearing and granting the capital improvement petition when he did not have record proof that the capital improvement petition and hearing notices were properly addressed and delivered to all of the Tenants.
- B. Whether the decision and order was properly addressed and delivered to all of the tenants.
- C. Whether the hearing examiner erred when he granted the capital improvement petition and held that the housing provider was entitled to a monthly rent ceiling surcharge of \$181.00 per unit, when the computation of the rent ceiling

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<sup>2</sup> See capital improvement petition at 13.

surcharge resulted in an increase of \$121.00 per unit.

### III. THE LAW AND DISCUSSION OF THE ISSUES

#### A. **Whether the hearing examiner erred by holding a hearing and granting the capital improvement petition when he did not have record proof that the capital improvement petition and hearing notices were properly addressed and delivered to all of the Tenants.**

The certified record shows that on September 12, 2003 RACD mailed by priority mail official notices of the scheduled hearing to the Housing Provider and Tenants in six (6) rental units at the housing accommodation. Record (R.) at 22-29. The certified record shows that on September 13, 2003, the United States Postal Service (USPS) published on its web site a Track and Confirm document stating that it delivered a notice to each of the Tenants in four (4) of the six (6) rental units: A, 1, 2, and 5.<sup>3</sup> The certified record shows notices were prepared for mailing to the Tenants, units 3 and 4, R. 25 & 26, but it does not show proof of delivery of the notices of hearing to the Tenants in units 3 and 4, by the Track and Confirm document from the USPS Internet web site.

The District of Columbia Administrative Procedure Act (DCAPA) provides at § 2-509(a):

In any contested case, all parties thereto shall be given reasonable notice of the afforded hearing by the Mayor or the agency, as the case may be. The notice shall state the time, place, and issues involved; ....

The Rental Housing Act provides at D. C. OFFICIAL CODE § 42-3502.16(c) (2001):

If a hearing is requested timely by either party, notice of the time and place of the hearing shall be furnished the parties by certified mail or other form of service which assures delivery at least 15 days before the commencement of the hearing. The notice shall inform each of the parties

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<sup>3</sup> The USPS Track and Confirm document for unit 5 was found in a companion case, CI 20,783 at R. 73.

of the party's right to retain legal counsel to represent the party at the hearing.

See Joyce v. Dist. of Columbia Rental Hous. Comm'n, 741 A.2d 24, (D.C. 1999) (where the court reversed due to the hearing examiner's failure to follow the Act's requirements of service of the decision by certified mail or other manner that ensures delivery); Ungar v. District of Columbia Rental Hous. Comm'n, 535 A.2d 887, 890 (D.C. 1987) where the court stated notice requirements must be strictly adhered to, since issues with the potential to adversely affect either other tenants or the landlord may lurk initially undetected in the tenant's petition; Id.; Tenants of 2724 Woodley Place, N.W. v. Lustine Realty Co., Inc., HP 20,781 (RHC June 25, 2004) (where the Commission remanded the Rent Administrator's decision, because of no findings of fact and conclusions of law on delivery of the notice to the parties, who were entitled to due process notice. The Housing Provider appeared, but the Tenant did not.

In this case, the agency, RACD, had the duty "[u]pon receipt of a petition, ... by first class mail, [to] notify the adverse parties named in the petition of their right to a hearing." 14 DCMR § 3902.3 (2004). RACD failed to certify to the Commission that it had properly served notice of the hearing on the Tenants, Gomez and Rivas, in rental units 3 and 4. The failure of RACD to certify that the Tenants in rental units 3 and 4 were properly served notice of the hearing on the capital improvement petition, in accordance with the DCAPA and the Act, requires a remand for proper service of the notice of a hearing on those Tenants and a hearing on the capital improvement petition solely for the Tenants in units 3 and 4. Therefore, this issue is remanded for proof of delivery of proper notice and hearing for the Tenants in units 3 and 4. No increase in the rent ceiling based on these capital improvements is valid for those units without due

process consisting of proof of proper delivery of the hearing notice to the Tenants and a hearing. See Ammerman v. Dist. of Columbia Rental Accommodation Comm'n, 375 A.2d 1060 (D. C. 1977).

**B. Whether the decision and order was properly addressed and delivered to all of the tenants.**

Hearing Examiner Keith Anderson issued the final decision and order on March 16, 2005. The RACD certified file contains USPS Track and Confirm documents from the USPS Internet web site dated March 18, 2005 showing delivery of the decision and order to all Tenants and the Housing Provider. R. at 66-79. Therefore, the Commission concludes that the decision was properly served on all the Tenants in the housing accommodation.

**C. Whether the hearing examiner erred when he granted the capital improvement petition and held that the housing provider was entitled to a monthly rent ceiling surcharge of \$181.00 per unit, when the computation of the rent ceiling surcharge resulted in an increase of \$121.00 per unit.**

The capital improvement petition stated the rent ceiling surcharge was \$121.00 per month per rental unit for recovery of the cost of the capital improvements. R. at 13. See generally, D.C. OFFICIAL CODE § 42-3502.10 (2001); 14 DCMR § 4210 (2004).

The decision contained the conclusion of law:

Petitioner is entitled to a capital improvement rent ceiling surcharge of \$181 [sic] per apartment per month to reimburse Petitioner for the cost of the proposed capital improvements, pursuant to Section 210 of the Act, D.C. Official Code Sect. 42-3502.10 (2001). This approval of the rent ceiling surcharge is based on substantial record evidence to support the requested surcharge in accordance with the Act and the Regulations. (emphasis added.)

Since the conclusion of law stated that the surcharge was \$181.00 for the Housing Provider to recover the cost of the capital improvements and the petition stated it was

\$121.00 per month per unit, the Commission questioned the Housing Provider's counsel about this discrepancy at its hearing. This was a difference of \$60.00 per month per unit. Counsel for the Housing Provider, at the Commission's hearing, stated he had no objection to the Commission correcting the conclusion of law from \$181.00 to \$121.00 per month per rental unit under the plain error rule, 14 DCMR § 3807.4 (2004), providing that the Commission may correct plain error. Cited in Proctor v. District of Columbia Rental Hous. Comm'n, 484 A.2d 543, 550 (D.C. 1984), Lane v. Nichols, TP 27,733 (RHC Aug. 10, 2004). See also Tenants of 2300 and 2330 Good Hope Rd., S.E. v. Marlbury Plaza, LLC, CI 20,753 (RHC Mar. 14, 2002) at n.6, which states, "Plain error relates to the issues raised." Citing Youssef v. Cowan, TP 22,784 (RHC Sept. 27, 2000) at 20. Accordingly, the Commission corrects the \$181.00 capital improvement rent ceiling surcharge to be \$121.00 per month per unit for rental units A, 1, 2, and 5.

#### **IV. THE CONCLUSION**

The Commission reviewed the RACD certified record and held that the record does not show that two of the six rental units received proper notice of the RACD hearing on the capital improvement petition. Due to agency error in the failure to certify and confirm proper delivery of the hearing notices before the hearing, the Commission remands for record proof of proper delivery of the hearing notices and a hearing on the capital improvement petition for the Tenants in units 3 and 4.

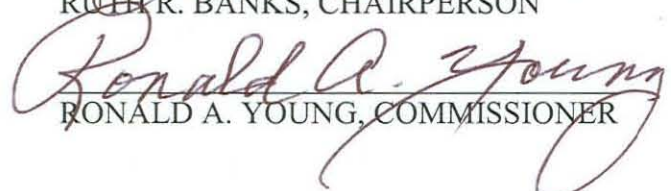
The Commission reviewed the RACD certified record and held that the certified record does show that the decision and order was properly delivered to all Tenants at the housing accommodation.

The Commission corrected the conclusion of law that stated the Housing Provider

was entitled to a rent ceiling surcharge of \$181.00 to the correct amount of \$121.00 per month per unit, as stated in the capital improvement petition. The surcharge of \$121.00 is not applicable to the Tenants in units 3 and 4, because there is no record proof they were properly served and received delivery of the notice of the RACD hearing.

SO ORDERED.

  
RUTH R. BANKS, CHAIRPERSON

  
RONALD A. YOUNG, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (2004) provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

D.C. Court of Appeals  
Office of the Clerk  
500 Indiana Avenue, N.W.  
6th Floor  
Washington, D.C. 20001  
(202) 879-2700

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in CI 20,784 was mailed by priority mail, with confirmation of delivery, postage prepaid this **15th day of December, 2005**, to:

Mondragon  
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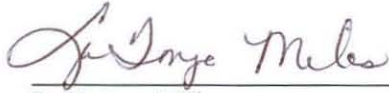
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