

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

HP 20,781

Ward Three (3)

LUSTINE REALTY CO., INC.
Housing Provider/Appellant

v.

TENANTS OF 2724 WOODLEY PLACE, N.W.
Tenants/Appellees

DECISION AND ORDER

August 16, 2002

BANKS, CHAIRPERSON. This case is on appeal to the Rental Housing Commission from a decision and order issued by the Rent Administrator. 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 (1991) govern the proceedings.

I. THE PROCEDURES

On May 22, 2000, the Housing Provider filed Hardship Petition, (HP) 20,781. On April 6, 2001, a settlement agreement was filed in the Office of Adjudication (OAD). It stated:

Housing Providers and Tenants agree to settle the above-referenced Hardship Petition on the following terms:

1. Housing Provider and Tenants have entered into a lease agreement, a copy of which is attached hereto.
2. Tenants hereby withdraw any and all objections and exceptions to the proposed decision of the Rent Administrator in this case.

Record (R.) at 32.

On August 7, 2000, the Rent Administrator referred the hardship petition to OAD, because objections to the auditor's report were filed by the Tenants. Hearing Examiner Gerald Roper issued the OAD decision and order on April 11, 2002. On April 22, 2002, the Housing Provider filed in OAD a motion for reconsideration, which was deemed denied, because Hearing Examiner Gerald Roper did not act on it. 14 DCMR § 4013.4 (1991). On May 7, 2002, the Housing Provider filed in the Commission a "Protective Notice of Appeal" which requested reversal of the dismissal of the hardship petition, which the parties settled. On August 7, 2002, the hearing examiner certified the OAD file for this appeal to the Commission. The OAD Case Certification To The Rental Housing Commission form stated there was one (1) hearing tape, which was not transmitted with the certified file. Subsequently, the Commission's contact representative learned that the tape was missing.

II. THE LAW

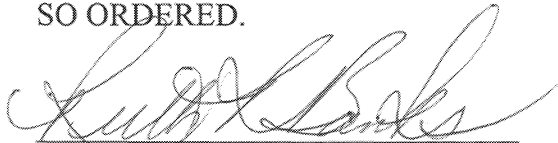
The Commission's rules provide that hearing tapes are an essential part of the certified record. 14 DCMR § 3804.3(b) (1991). The Commission must have the hearing tapes for a review of the OAD record, and in the absence of hearing tapes, the appeal is disposed of by remand to OAD for a hearing, usually de novo. See Mellon Property Mgmt. v. Tenants of 111 Columbia Road, N.W., HP 20,745 (RHC May 19, 1997); Dorchester Hous. Asso. v. Tenants of Dorchester Hous., CI 20,672 (RHC June 3, 1997); Holberg v. Davis, TP 23,529 (RHC Apr. 11, 1996); Cannon v. Stevens, TP 23,523 (RHC Apr. 11, 1996) cited in Joyce v. Webb, TP 20,720 (July 31, 2000).

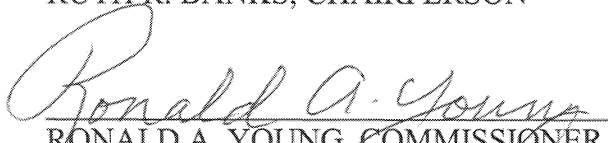
III. CONCLUSION

The official file does not contain the official OAD hearing tape and the Commission cannot issue a decision without a complete hearing record. Accordingly, the Commission does not have a complete certified record for review of the hearing examiner's decision and order, in violation of 14 DCMR § 3804(a)(b) (1991).

Therefore, it is hereby ordered that this case is remanded for a hearing de novo, because the Commission does not have a complete hearing record to review and make a decision on the appeal.

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON


RONALD A. YOUNG, COMMISSIONER


CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in HP 20,781 was mailed postage prepaid by priority mail with confirmation of delivery, this **16th day of August, 2002**, to:

Richard Luchs, Esquire
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and

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LaTonya Miles
Contact Representative