DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

SF 20,049

Ward Four

RITTENHOUSE, LLC
Housing Provider/Appellant

v.

TENANTS OF 45 AFFECTED RENTAL UNITS
Tenants/Appellees

ORDER ON MOTION FOR SUMMARY REVERSAL

June 19, 2002

BANKS, CHAIRPERSON. On March 1, 2001, Rittenhouse, LLC filed a petition for change in services and facilities (SF 20,049) based on gas leaks at the housing accommodation. Prior to filing the petition, the Housing Provider changed the gas service to electric service for cooking in 45 of the 203 units in the housing accommodation, after making the decision to abandon the gas service. The petition requested the Rent Administrator's approval of the elimination of gas for cooking, the reduction of rent ceilings for the 45 affected units, and reduction of rent for twelve (12) of the affected units. On December 18, 2001, the Office of Adjudication (OAD) issued the decision and order on the petition authored by Administrative Law Judge (ALJ) Henry McCoy. On December 31, 2001, Rittenhouse, the Housing Provider, filed a motion for reconsideration, and on January 2, 2002, Rittenhouse filed supplemental points and authorities to that motion. While waiting for an order on the motion for reconsideration,[1] the Housing Provider filed two "protective" notices of appeal in the

[1] The OAD certified record does not contain an order on the motion for reconsideration. Pursuant to 14 DCMR § 4013.5 (1991), the motion for reconsideration was deemed denied, because the Administrative Law Judge failed to act, within ten (10) days of the filing of the motion. The ten day period to act expired on January 14, 2002.

Commission. Rittenhouse filed the first notice of appeal on January 4 and it filed the second, an amended notice of appeal, on January 8, 2002.

On January 28, 2002, the Housing Provider filed the instant notice of appeal,[2] which was followed by the Housing Provider's motion for summary reversal on February 4, 2002. On the same day, February 4, 2002, the Tenants, Benjamin Hart and Mary Hart, filed a document entitled, response to property owners' appeal dated January 28, 2002. On February 12, 2002, the Tenants, Benjamin Hart and Mary Hart, filed their opposition to the motion and a cross appeal. On February 14, 2002, the Housing Provider filed a reply to the Harts' opposition to the motion for summary reversal. On February 21, 2002, the Tenants through counsel filed an opposition to the motion for summary reversal. On February 26, 2002, the Housing Provider filed [in the Office of Adjudication] a reply to the Tenants' opposition to the motion for summary reversal.[3] On March 7, 2002, the Housing Provider filed a response to the Tenants' allegation of error in the Housing Provider's February 26, 2002 reply.

DISCUSSION

A. The OAD Decision

In the OAD decision and order, the Administrative Law Judge made the following relevant findings of fact and conclusion of law:

Findings of Fact

1. The housing accommodation is The Rittenhouse Apartments located at 6101 – 16th Street, NW and consists of 203 residential rental units ....

[2] The January 28, 2002, notice of appeal states that the time for the Administrative Law Judge to act on the motion for reconsideration expired without action by the Administrative Law Judge, and that the notices of appeal filed on January 4 and 8, 2002 were protective notices of appeals.

[3] On February 26, 2002, OAD transmitted the reply to the Commission the same day it was filed in OAD.

2. ...
3. Some time during the beginning of January 2001, the Washington Gas Company during the course of responding to a report of a gas leak at the housing accommodation shut off gas service to the building.
4. On January 8, 2001, Rittenhouse management called Associates Plumbing, Inc. to inspect and test the gas lines in the building. Associates Plumbing inspected the gas lines and performed tests on the lines on January 8th, 9th and 10th.
5. Based on the tests performed by Associates Plumbing, the decision was made to abandon the gas lines.
6. On January 12, 2001 work started to convert the 45 affected rental units from gas service for cooking to electric service for cooking.
7. The related service of cooking with gas was permanently eliminated for the 45 affected units and replaced with the related service of cooking with electric by the end of January 2001.
8. On March 1, 2001, the owners of the Rittenhouse Apartments filed Services and Facilities Petition (SF) #20,049.

Rittenhouse v. Tenants of 45 Affected Apartments at 1601 16th Street, N.W., SF 20,049 (OAD December 18, 2001) at 4.

Conclusion of Law

> The Housing Provider/Petitioner substantially decreased related services to 45 rental units at 6101 – 16th Street, NW [sic] without the prior approval of the Rent Administrator in violation of 14 DCMR § 4211.5.

Id. at 5.

On December 18, 2001, OAD issued the decision and order, which denied the petition for the change in services and facilities from gas to electric cooking stoves in 45 affected rental units.

B. The Appeal

The Housing Provider's notice of appeal filed on January 28, 2002 states the notices of appeal filed on January 4 and 8, 2002 were protective notices of appeal. The January 28, 2002, notice of appeal stated the errors in the decision were:

1. The decision was contrary to the Act at D. C. OFFICIAL CODE § 3502.11, regulations at 14 DCMR 4211 (1991), and prior Commission precedents.

2. That the decision is arbitrary and capricious because it ignored unrebutted evidence that the related service of gas for cooking was terminated as a result of accident or inadvertence (leakage of gas pipes), and could not be restored. Therefore, it was not feasible (or legally necessary) to obtain the prior approval of the Rent Administrator.
3. The decision ignores unrebutted evidence fulfilling all of the statutory and regulatory criteria showing that the Petition should have been granted.
4. The decision is an abuse of discretion for failure to consider relevant evidence, statutory law and regulations, and wrongfully denies the petition.
5. The decision failed to adjust the rent ceilings as mandated by the Act.
6. The conclusion assumes no prior approval by the Rent Administrator when there is no evidence in the record on that issue.
7. The decision assumes that prior approval of the Rent Administrator could have been obtained prior to the change in related service when the record evidence is to the contrary.

Notice of Appeal at 1-2.

The motion for summary reversal states that only a single issue is dispositive of the appeal. That issue is whether the Administrative Law Judge erred by ignoring 14

DCMR 4211.6 (1991).[4] Motion at 2.

The Housing Provider cited Shipley Gardens v. Tenants of Shipley Park Apartments, CI 20,130 (Dec. 18, 1987) as authority for the Commission to summarily reverse the hearing examiner. In Shipley the Commission stated:

> As a threshold issue, we must determine whether the housing provider's requested relief—summary reversal—is appropriate in the case before us. 'Summary reversal is an extraordinary remedy for which the proponent has a 'heavy burden of demonstrating both that his remedy is proper and that the merits of his claim so clearly warrant relief as to justify expeditious action.' (Citations omitted.) There are two sub-questions at issue: (1) whether the case is one in which summary disposition is appropriate, and (2) whether the merits of the movants' claim warrant reversal.
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> In JBG Properties, Inc. v. Van Ness South Tenants Ass'n, TP 20,773 (RHC Mar. 17, 1986), we found justification for summary disposition of an appeal where only a single legal issue was involved and 'both parties have had ample opportunity to state their respective positions and their legal arguments.' Id. at 3.

In the instant appeal, the Housing Provider listed seven issues in the notice of appeal. Next, it filed the instant motion for summary reversal, which cited Shipley, which clearly stated that motions for summary reversal shall be considered in one issue cases where summary disposition is appropriate and merited by the movant's position. This appeal has more than one issue and the merit of the Housing Provider's position is not so clear that the Commission's decisional process should be summary. Here, the ALJ considered the record evidence and concluded that the Housing Provider did not follow

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[4] The rule, 14 DCMR § 4211.6 (1991) states:

> If related services or facilities at a rental unit or housing accommodation decrease by accident, inadvertence or neglect by the housing provider and are not promptly restored to the previous level, the housing provider shall promptly reduce the rent for the rental unit or housing accommodation by an amount which reflects the monthly value of the decrease in related services or facilities.

the procedures for reduction of services and facilities when it failed to obtain approval by the Rent Administrator prior to the reduction in services and facilities, pursuant to 14 DCMR § 4211.5 (1991).[5]

This appeal involves more than the one issue stated in the motion for summary reversal. The appellant filed a notice of appeal with seven (7) issues for the Commission to decide. The Commission must review the record evidence to determine whether the evidence was unrebutted as stated in issues two (2) and three (3), and the legal significance if there is unrebutted evidence; whether "prior approval" by the Rent Administrator was required as stated in issues six (6) and seven (7); whether the ALJ's decision was contrary to the Act and regulations as stated in issues one (1) and four (4); and whether the rent ceilings should have been adjusted by the ALJ as stated in issue five (5). The Commission must address all issues raised by the appellant, especially those that require interpretation of its organic act and implementing regulations. See Edward v. District of Columbia Taxicab Comm'n, 645 A.2d 600, 603 (D.C. 1994).

Accordingly, the motion for summary reversal is DENIED. This appeal will be scheduled for Commission hearing by its staff, and the notice of certified record and hearing will be forwarded to the parties.

In addition, the Commission sua sponte noted that the Tenants' cross appeal was untimely filed. Pursuant to 14 DCMR § 4013.6, the parties had ten days after the motion for reconsideration was deemed denied to file a notice of appeal. In this appeal, OAD issued the decision on December 18, 2001; the Housing Provider filed a motion for

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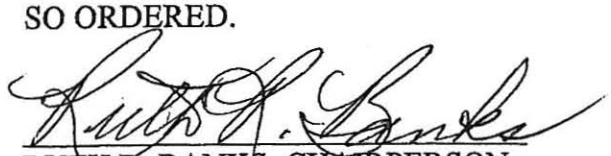
[5] The rule, 14 DCMR § 4211.5 (1991) states:

> A housing provider shall not change substantially related services or facilities in violation of §4211.2 or decrease substantially related services or facilities at a rental unit or housing accommodation without the prior approval of the Rent Administrator.

reconsideration on December 31, 2001; the ten day period for the ALJ to act expired on January 15, 2002; and any notice of appeal was due from the parties no later than, January 30, 2002, which was the tenth day after the period expired for the hearing examiner to act on the motion for reconsideration. Accordingly, the Tenants' notice of appeal was untimely filed on February 12, 2002, and is dismissed. See Smith v. District of Columbia Rental Accommodations Comm'n, 411 A.2d 612 (D.C. 1979).

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Order on Motion for Summary Reversal was served postage prepaid by priority mail with confirmation of delivery the 19th day of June, 2002, to:

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