DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 11,886

PATRICIA DIXON, Tenant/Appellant

v.

CLAYTON COTTRELL, Landlord/Appellee

On Appeal from the
Rent Administrator

Decided May 23, 1986

DECISION AND ORDER

Newsome, Chairperson: This matter comes before the Commission on the appeal of the tenant to a Decision and Order of the Rent Administrator issued on April 17, 1985. The Rent Administrator's designee, Hearing Examiner Michael Blaher, issued the decision stating that the landlord was exempt, that the landlord had not retaliated, and dismissing the tenant's petition with prejudice. 1/

1/ Although the hearing examiner made statements in the decision on the merits of the tenant's petition, the basis for the dismissal with prejudice was the failure of the tenant to appear at the scheduled hearing. Pursuant to the D.C. Administrative Procedures Act, D.C. Code §1-1509(b), the tenant in this matter would have had the burden of proof as to the factual basis of her complaint. See also Curtis v. D.C. Department of Employment Services, 490 A.2d 178 (where the Court held that there is no substantial evidence without sworn testimony.) Since the tenant did not appear, the landlord was not required to present any contradictory evidence. However, the tape of the hearing indicates that the hearing examiner gave the landlord the opportunity to

The tenant appeals the dismissal with prejudice of her tenant petition arguing: (1) that she did not receive notice of the hearing because her mailbox was broken, and (2) that the landlord is not exempt from Title II of the Rental Housing Act of 1980 (1980 Act), D.C. Code §45-1501 et seq. (1981 ed.).

The tenant filed her petition on January 22, 1985 alleging that the rent exceeded the legal rent ceiling, that the housing accommodation was not properly registered, and that her landlord had retaliated against her by serving her with a notice to vacate. A hearing was held on March 13, 1985 pursuant to notices sent to both the landlord and the tenant at the housing accommodation address, but to different apartment numbers. The landlord appeared at the hearing, but the tenant did not. The hearing examiner gave the landlord an opportunity to present a defense to the charges.2/ With this opportunity, the landlord

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1/ (continued)
present any rebuttal to the allegations in the tenant petition.

2/ Although the tape reflects that the landlord brought documentation concerning the habitability of only four units in the housing accommodation, these documents were not introduced into evidence and not made a part of the record. The tape reflects that these documents included a settlement sheet and an appraisal report which stated that only four units of the building were habitable. Additionally, the tape reflects that the landlord had a form from the housing business license section of DCRA which indicated he was exempt because he had only four rental units. The Commission would state again that in order for documents to be considered a part of the record, the documents must be marked as exhibits and

indicated that he had rescinded the notice to vacate within a few days after he discovered that unless the tenant did not pay her rent or had violated a term of her lease he had no legal grounds upon which to serve the notice to vacate.

On April 17, 1985, the hearing examiner dismissed the tenant petition because the tenant had failed to appear, but the hearing examiner also stated that the landlord had demonstrated that he only had four rental units and that he had not retaliated. The decision and order stated that an appeal must be filed by May 6, 1986, and was mailed to the tenant at the same addressed used to get the notice of hearing. On May 13, 1986, the tenant filed her appeal with the Commission alleging that she filed a Motion for Reconsideration with the Rental Accommodations and Conversion Division (RACD) on April 26, 1985, which had been denied. The record before the Commission does not contain a copy of either the motion or the decision denying the motion, and a check reveals that the mail logs of RACD for the date in question have been misplaced. Accordingly, although no copy of the motion is in the record, the Commission cannot dismiss this appeal as untimely since the Commission cannot determine if the motion for reconsideration was or was not filed.

On the issue of whether the tenant received notice of the

2/ (continued)
introduced into evidence. Parties should be instructed to make sufficient copies of all documents so that a copy may be placed in the official record. But see footnote 1.

scheduled hearing, the Commission relies upon the rebuttable presumption of receipt by the addressee where an agency shows that the notice was properly stamped, addressed and delivered to the post office. See Town Center Management v. D.C. Rental Housing Commission, 496 A.2d 264 (D.C.App.1985). In this case,the record of the case shows that the agency mailed notices of the hearing to the landlord and the tenant at the same address, but different apartment numbers. The landlord appeared at the hearing. The tenant represented in support of the non-receipt of the notice that her mailbox was often broken in her appeal. However, the tenant received the decision of the hearing examiner by her own admission within two days of its mailing by the agency. Her receipt of one of the agency's mailings buttresses the presumption of receipt. The Commission holds that the tenant has failed to rebut the presumption of receipt. See Darby v. Gary Investments, Inc., TP 10,452 (RHC, 3/26/86). On that basis, the Commission affirms the hearing examiner's dismissal of the tenant's petition with prejudice.

Accordingly, it is this 23rd day of May, 1986, ORDERED that the Decision and Order of the Rent Administrator, issued April 17, 1985 be, and hereby is, AFFIRMED.

Belva D. Newsome, Chairperson

Isaiah T. Creswell, Jr., Commissioner

Daniel B. Jordan, Commissioner

Copies to:

Patricia Dixon
216 T Street, N.W.
Apt. 2
Washington, DC 20001

Clifton Cottrell
216 T Street, N.W.
Apt. 4
Washington, DC 20001

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of May, 1986, a copy of the foregoing decision and order was placed in the District government mailing system. The time for appeal begins to run three (3) business days following the postmark date on the envelope transmitting this Decision and Order.

N. Stephenson