DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 24,752

In re: 136 Urell Place, N.E.

Ward Four (4)

EDWARD T. BATTLE
Housing Provider/Appellant

v.

CLAUDETTE McELVENE
Tenant/Appellee

DECISION AND ORDER

May 18, 2000

YOUNG, COMMISSIONER: This case is on appeal from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Office of Adjudication (OAD), to the Rental Housing Commission (Commission), pursuant to the Rental Housing Act of 1985 (Act), D. C. Law 6-10, D. C. Code § 45-2501, et seq., and the District of Columbia Administrative Procedure Act (DCAPA), D.C. Code § 1-1501, et seq. The Commission's rules, 14 DCMR 3800 et seq., also apply.

I. PROCEDURAL HISTORY

The housing accommodation, located at 136 Urell Place, N.E., is a single family home owned by Edward T. Battle, the housing provider/appellant. The tenant/appellee, Claudette McElvene, filed Tenant Petition (TP) 24,752 on July 12, 1999. In her tenant petition the tenant complained of improper increases in rent. The petition alleged: 1) the housing provider took a rent increase larger than the amount of increase allowed by any applicable provision of the Act; 2) one hundred eighty (180) days had not passed since

the last rent increase; 3) a proper thirty (30) day notice of rent increase was not provided to her before the rent increase became effective; and 4) the housing provider failed to file the proper rent increase forms with RACD.

A hearing on the petition was held on October 4, 1999. OAD Hearing Examiner Thomas Word was the presiding official at the hearing. The issue considered by the hearing examiner at the hearing, was whether the housing provider demanded rent from the tenant which exceeded the rent ceiling. On January 6, 2000, the hearing examiner rendered his decision. The hearing examiner found as a matter of fact:

1. The subject property is located at 136 Urell Place, Street [sic], NE. [sic].
2. Petitioner Claudette McElvene is a tenant at subject housing accommodation.
3. The subject property is owned and managed by Respondent.
4. The current rent ceiling for Petitioner's rental unit is $600.00.

McElvene v. Battle, TP 24,752 (OAD Jan. 6, 2000) at 4. The hearing examiner concluded as a matter of law:

> Respondent's notice[sic] of rent increases are in violation of D.C. Code Section 45-2518(f).

Id.

II. ISSUES ON APPEAL

In his timely filed notice of appeal the housing provider stated:

1. Issue identifications of P/T 24,752 [sic] were incomplete and in analysis error. Exceeding the Rent Ceiling and 45-2518(f) are inappropriate for determining the Adjustment Procedure for Hardship Petition #20779 [sic].
   a. other issues raised by Tenant Petition and not identified or addressed
      1.) harrassment [sic] as identified in Section VII of the T.P.
      2.) security deposit adjustment[.]

2. Finding of Defective Notices in the Rent Administrator's decision are in error

a. Hardship Petition procedures identified 45-2526(b) [sic] provides that the Rent Administrator notifies the non-petitioning party of their right to a hearing on the petition.
b. Tenant Notices of General Applicability for calendar year 1998 and 1999 are included on the last two pages of TP #24,752[.]

On February 11, 2000, the housing provider filed a brief in support of the appeal.[1] The housing provider raised issues in the brief, which he did not raise in the notice of appeal. Review by the Commission is limited to issues raised in the notice of appeal. 14 DCMR 3807.4. The Commission cannot review issues raised in the housing provider's brief that were not raised in the notice of appeal. The District of Columbia Court of Appeals has determined that the use of the brief as a means of advancing issues that were not raised in the notice of appeal "exceeds the permissible scope of the ... brief." Joyner v. Jonathan Woodner Co., 479 A.2d 308, 312 (D.C. 1984); cited in Johnson v. District of Columbia, 728 A.2d 70 (D.C. 1999); Frye & Welch Assocs., P.C. v. District of Columbia Contract Appeals Bd., 664 A.2d 1230, 1233 (D.C. 1995); Mersha v. Marina View Tower Apartments, TP 24,302 (RHC July 23, 1999). Accordingly, the Commission limited its review to the issues raised in the notice of appeal.[2]

III. DISCUSSION OF THE CASE

A. Whether the decision of the hearing examiner should be reversed because it contains analysis errors.

The housing provider argues on appeal that the decision of the hearing examiner contained analysis errors.

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[1] Pursuant to 14 DCMR 3802.7, a party may file a brief in support of its notice of appeal within five (5) days of receipt of the notice of certification of record.

[2] In his brief on appeal, the housing provider raised the issue of whether the hearing examiner erred in determining that he violated the Act by demanding rent from the tenant which exceeded the rent ceiling for the tenant's unit.

The Commission's regulation concerning the initiation of appeals, 14 DCMR 3802.5(b), provides that the notice of appeal shall contain the following: "The Rental Accommodations and Conversion Division (RACD) case number, the date of the Rent Administrator's decision appealed from, and a clear and concise statement of the alleged error(s) in the decision of the Rent Administrator." (emphasis added).

On appeal to the Commission the housing provider argues that the January 6, 2000, OAD decision contains "analysis errors." However, the housing provider has failed to provide the Commission with specific instances of the errors. The Commission has previously held that an appeal, which fails to provide the Commission with a clear and concise statement of the alleged errors in the decision as required by 14 DCMR 3802.5(b), will be dismissed. Pierre-Smith v. Askin, TP 24,574 (RHC Feb. 29, 2000). Accordingly, the Commission dismisses this appeal issue as violative of the Commission's rules on appeals.

B. Whether the hearing examiner erred when he determined that the housing provider violated §45-2518(f) by increasing the tenant's rent without providing the notice required by the Act.

In his decision and order the hearing examiner determined that pursuant to D.C. Code § 45-2518(f)[3] of the Act, the notice of rent increase provided the tenant by the housing provider was defective and therefore invalid.

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[3] D.C. Code § 45-2518(f), provides:

> Any notice of an adjustment under § 45-2516 shall contain a statement of the current rent, the increased rent, and the utilities covered by the rent which justify the adjustment or other justification for the rent increase. The notice shall also include a summary of tenant rights under this chapter and a list of sources of technical assistance as published in the District of Columbia Register by the Mayor.

The evidence of record reflects that by memorandum dated May 3, 1999 (Respondent's Exhibit (R. Exh.) 3), the housing provider notified the tenant that effective June 1, 1999 her rent would be increased. The memorandum stated:

> In accordance with Section 3509 of the Regulations for the Rental Housing Emergency Act of 1985, the December 30, 1998, 120 day review process has been completed by the Rental Housing Authority [sic]. As of June 1, 1999, your new monthly rent will reflect a 1998 General Applicability 1.8% increase of $10.80, and a 1999 General Applicability 1.0% increase of $6.11 and the Hardship Petition[4] 12.0% increase of $97.74, totaling a new monthly rental rate of $714.65.

As the hearing examiner noted, the notice from the housing provider to the tenant was defective, because the notice did not contain a statement of the tenant's current rent, the utilities covered by the rent, a summary of the tenant's rights, or a list of sources of technical assistance published in the District of Columbia Register. Therefore, the decision of the hearing examiner declaring the May 3, 1999 notice defective and invalidating the increases attempted by the housing provider is affirmed.

Moreover, the evidence of record reveals that the housing provider violated other provisions of the Act in his attempt to increase the tenant's rent. The record reflects that on March 30, 1999, the housing provider filed with RACD two (2) Tenant Notice(s) of Increase of General Applicability.[5] The first notice reflected a CPI-W increase of 1.8% for calendar year 1998 (Petitioner's Exhibits (P. Exh.) 1) and increased the rent ceiling

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[4] The 12% hardship petition increase referred to by the housing provider in his May 3, 1999 letter was Hardship Petition (HP) 20,779 (R. Exh 1), which was filed by the housing provider on December 30, 1998.

[5] Increases of general applicability are provided for by D C Code § 45-2516(b), which states, in part:

> On an annual basis, the Rental Housing Commission shall determine an adjustment of general applicability in the rent ceiling established by subsection (a) of this section. This adjustment of general applicability shall be equal to the change during the previous calendar year ending December 31, in the Washington, D.C., Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for all items during the preceding calendar year.

from $600.00 to $610.80, effective April 1, 1999.[6] The second notice reflected a CPI-W increase of 1.0% for calendar year 1999 (P. Exh. 2) and increased the rent ceiling from $610.80 to $619.91, effective June 1, 1999. While the record contains a memorandum dated May 7, 1999, from the housing provider to the tenant wherein the housing provider states that he would temporarily suspend the General Applicability Increases of 1998 and 1999, in favor of implementing the conditional hardship petition increase (R. Exh. 6), the housing provider, at the OAD hearing, argued in support of the validity of the three (3) increases implemented in the May 3, 1999 memorandum.

The May 3, 1999 memorandum from the housing provider to the tenant attempted to implement three rent adjustments, all on June 1, 1999. The applicable provision of the Act, D.C. Code § 45-2518(g), provides, "[n]o adjustments in rent under this chapter may be implemented until a full 180 days have elapsed since any prior adjustment." The Act, D.C. Code 45-2518(h)(1), further provides:

> One year from March 16, 1993, unless otherwise ordered by the Rent Administrator, each adjustment in rent charged permitted by this section may implement not more than 1 authorized and previously unimplemented rent ceiling adjustment. If the difference between the rent ceiling and the rent charged for the rental unit consists of all or a portion of 1 previously unimplemented rent ceiling adjustment, the housing provider may elect to implement all or a portion of the difference.

The regulations, at 14 DCMR 4205.4 (1998), provide:

> A housing provider shall implement a rent adjustment by taking the following actions, and no rent adjustment shall be deemed properly implemented unless the following actions were taken:

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[6] The notice increased the rent ceiling, however, the notice reflected that the tenant's rent was not increased beyond the $600.00, which was the rent charged before the 1.8% 1998 CPI-W increase. In Winchester Van Buren Tenants' Ass'n. v. District of Columbia Rental Housing Comm'n., 550 A 2d 51 (D.C. 1988), the court determined that D.C. Code § 45-2518 prohibited more than one (1) increase within 180 days in the actual rent charged, however, it did not preclude the housing provider from putting into effect more than one (1) increase in the rent ceiling during that 180 day period.

(a) The housing provider shall provide the tenant of the rental unit, not less than thirty (30) days written notice pursuant to § 904 of the Act, the following:

(1) The amount of the rent adjustment;

(2) The amount of the adjusted rent;

(3) The date upon which the adjusted rent shall become due; and

(4) The date and authorization for the rent ceiling adjustment taken and perfected pursuant to §4202.9.

In the instant case, the housing provider, contrary to the provisions of D.C. Code § 45-2518(g) and (h), erroneously attempted to implement two (2) CPI-W increases as well as a hardship petition increase,[7] in the notice to the tenant dated May 3, 1999. Further, the housing provider violated the provisions of 14 DCMR 4205.4 (1998), when he failed to provide the tenant with a thirty (30) day notice of rent increase, the date and authorization for the rent ceiling adjustments he attempted to implement. Therefore, this appeal issue is denied and the decision of the hearing examiner on this issue is affirmed.

C. Whether the hearing examiner erred when he failed to address in his decision the tenant's allegation of harassment which was raised in the tenant's tenant petition.

The housing provider argues that the decision of the hearing examiner did not identify or address the allegation made by the tenant in the tenant petition that she was harassed by the housing provider.

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[7] D.C. Code § 45-2522(c), provides, in part:

The Rent Administrator shall accord an expedited review process for a petition filed under this section and shall issue and publish a final decision within 90 days after the petition has been filed. If the Rent Administrator does not render a final decision within 90 days from the date the petition is filed, the rent ceiling adjustment requested in the petition may be conditionally implemented by the housing provider. The conditional rent ceiling adjustment shall be subject to subsequent modification by the final decision of the Rent Administrator on the petition.

A review of the record (tape) of the OAD hearing reflects that the tenant presented no evidence either documentary or testamentary, which supported her allegation of harassment.

The DCAPA, D.C. Code § 1-1509(b), provides: "In contested cases, except as may be provided by law, other than this subchapter, the proponent of a rule or order shall have the burden of proof." The proponent, the tenant, had the obligation to come forth, at the hearing, with sufficient probative evidence on each contested issue, including her allegation of harassment, essential to the rule or order to establish her case by a preponderance of evidence. 14 DCMR 4003.1. To prevail the proponent must offer some evidence, either oral or documentary or both. Hampton Courts Tenants' Ass'n. v. Wm. C. Smith Co., CI 20,176 (RHC May 20, 1988). If the petitioner fails to put sufficient competent evidence into the record to support the claim, the petition should be dismissed with prejudice. Rosenboro v. Askin, TP 3991 and TP 4673 (RHC Feb. 26, 1993). The hearing examiner did not err in his failure to make findings of fact on issues raised in the petition where the petitioner failed to introduce evidence at the OAD hearing on those issues. See Marshall v. District of Columbia Rental Housing Comm'n., 533 A.2d 1271, 1277 (D.C. 1987); cited in Hill v. CMF Management, TP 10,235 (RHC Oct. 25, 1989). Accordingly, this appeal issue is dismissed.

D. Whether the hearing examiner erred when he failed to address in his decision the tenant's complaint that the housing provider demanded from her an increased security deposit.

The housing provider argued that the hearing examiner erred when he failed to address, in his decision, the tenant's complaint concerning a demand by the housing

provider for payment of an increased security deposit of $114.66, to reflect the increase in rent demanded by the housing provider.

The evidence of record reflects that in his May 3, 1999 memorandum to the tenant (R. Exh. 3), the housing provider stated, "[i]f you do not want to pay the security deposit increase in one payment, we can agree to a three month installment of $38.22 per month." The record[8] further reflects that the lease agreement in effect between the parties, required the tenant to maintain a security deposit of $600.00, which was the equivalent of one (1) month's rent when the tenant entered into the lease.

The applicable regulation, 14 DCMR 308.2, provides:

> On or after February 20, 1976, any security deposit or other payment required by an owner as security for performance of the tenant's obligations in a lease or rental of a dwelling unit shall not exceed an amount equivalent to *the first full month's rent charged* that tenant for the dwelling unit, *and shall be charged only once by the owner to the tenant.* (emphasis added.)

The DCAPA, D.C. Code § 1-1509(e), requires that findings of fact and conclusions of law be made on each contested issue of fact or law in a decision and order adverse to a party in the case. Citizens Ass'n. of Georgetown, Inc. v. District of Columbia Zoning Comm'n., 401 A.2d 36 (D.C. 1979); cited in Tenants of 4501 Connecticut Ave., N.W v. Albermarle Tower Co., CI 20,523 (RHC June 25, 1992). The evidence of record does not reflect that the tenant paid the increased security deposit demanded by the housing provider, however, the hearing examiner was still required to make findings of fact on this issue. Accordingly, this issue is remanded to the hearing examiner for findings of fact and conclusions of law regarding whether the housing provider improperly demanded an increase in the security deposit from the tenant.

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[8] Attached to the tenant petition submitted by the tenant was a copy of the lease agreement signed and dated by the parties.

IV. CONCLUSION

The decision of the hearing examiner declaring that the housing provider's May 3, 1999 notice of rent increase was defective and therefore invalid is affirmed. The decision of the hearing examiner is remanded for findings of fact and conclusions of law, based on the present record, regarding whether the housing provider improperly demanded an increase in the security deposit from the tenant.

SO ORDERED.

RUTH R. BANKS, CHAIRPERSON

RONALD A. YOUNG, COMMISSIONER

JENNIFER M. LONG, COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in TP 24,752 was mailed postage prepaid, by certified mail, this **18th** day of May, 2000, to:

Edward T. Battle
1240 Girard Street, N.E.
Apt. 1
Washington, D.C. 20017

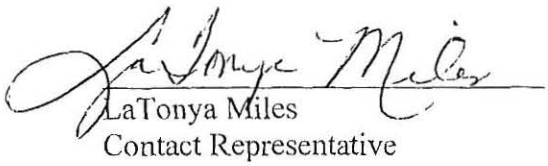
Claudette McElvene
136 Urell Place, N.E.
Washington, D.C. 20011

LaTonya Miles
Contact Representative

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in TP 24,752 was mailed postage prepaid, by priority mail, this **15th** day of June, 2000, to:

Claudette McElvene
136 Urell Place, N.E.
Washington, D.C. 20011



LaTonya Miles
Contact Representative