DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 24,817

In re: 3722 D Street, S.E., Unit 102

Ward Two (2)

C.I.H. PROPERTIES
Housing Provider/Appellant

v.

TERRI TORAIN
Tenant/Appellee

DECISION AND ORDER

July 17, 2000

Per Curiam: This case is on appeal from a decision of 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 regulations, 14 DCMR 3800 et seq., also apply.

I. PROCEDURAL BACKGROUND

Terri Torain, the tenant/appellee, filed Tenant Petition 24,817 (TP 24,817) with the Rental Accommodations and Conversion Division (RACD) on September 21, 1999. The petition concerned the housing accommodation at 3722 D Street, S.E., unit 102. In the petition, the tenant alleged that her housing provider C.I.H. Properties (CIH) substantially reduced the services and facilities provided in connection with her rental unit.

On November 16, 1999, Hearing Examiner Gerald J. Roper held the adjudicatory hearing. The tenant appeared pro se. The housing provider was neither present nor represented. Therefore, the hearing was held in the respondent's absence.

The hearing examiner issued the decision and order on March 8, 2000. As a preliminary matter, in his decision and order, the hearing examiner determined that "[n]otice of the date, time and place of the hearing was furnished to the parties in accordance with Section 216 of the Act, D.C. Code 45-2526(c)." Record (R.) at 42. The hearing examiner made the following findings of fact: (1) the subject housing accommodation, 3722 D Street, S.E., was not registered with the RACD under the Rental Housing Act of 1985; (2) the rent was not reduced during the period of Torain's tenancy; (3) the housing provider had knowledge of the maintenance and repair services necessary to correct the tenant's problem; (4) maintenance and repairs are related services included in the mandatory rent; (5) the housing provider failed to make timely repairs, which threatened the health, safety and welfare of the tenant; (6) CIH was cited by DCRA for twelve (12) housing code violations; and (7) the housing provider substantially reduced the tenant's services. As a matter of law, the hearing examiner concluded that the housing provider failed to provide maintenance and repair services as required by D.C. Code § 45-2521, and 14 DCMR 4211. See R. at 34.

The hearing examiner ordered CIH to refund fifty dollars ($50.00) per month for the period of January 1997 through November 1999 for the reduction in the related services of maintenance and repairs. He also ordered CIH to refund twenty-five dollars ($25.00) per month, for the period of August 25, 1999 through November 1, 1999, for the

absence of a kitchen light. The hearing examiner concluded that the total rent refund, including 6% interest, was $2255.00.

CIH filed a motion for reconsideration of the March 8, 2000 OAD decision. The envelope, which contained the housing provider's motion, was postmarked March 21, 2000 by the United States Postal Service. However, the motion was date-stamped by OAD signifying receipt on April 10, 2000. The hearing examiner did not decide the motion for reconsideration.

On April 13, 2000, CIH filed in the Commission the instant notice of appeal from the March 8, 2000 OAD decision. The Commission scheduled the hearing for May 24, 2000. However, the tenant motioned to reschedule the hearing and the hearing was subsequently held by the Commission on June 14, 2000.

II. JURISDICTIONAL ISSUE

Whether the Commission has jurisdiction to review the notice of appeal.

As a preliminary matter, before the Commission considers the merits of CIH's notice of appeal, the Commission must first determine whether it has jurisdiction over the case. Neither of the parties raised the issue of jurisdiction on appeal, but pursuant to King v. Remy, TP 20,962 (RHC May 18, 1988) the Commission has discretion to raise the issue of jurisdiction sua sponte.[1] In addition, with regard to appeals, "the District of Columbia Court of Appeals has ruled that the statutory ten day time period for filing an appeal is jurisdictional, which means that after the period expires the Commission no longer has jurisdiction to accept an appeal, and the time cannot be extended." Lupica v.

[1] Similarly, the District of Columbia Court of Appeals has sua sponte raised and subsequently decided that it did not have jurisdiction to hear an appeal. See Brandywine Ltd. Partnership v. District of Columbia Rental Hous. Comm'n, 631 A.2d 415, 417 (D.C. 1993).

Balsham, HP 20,071 (RHC Feb. 12, 1988) (citing Smith v. District of Columbia Rental Accommodations Comm'n, 411 A.2d 612 (D.C. 1980) (emphasis added)).

Since the District of Columbia Court of Appeals has mandated that the Commission does not have jurisdiction over an appeal if the appeal was untimely filed, the Commission must first determine, in the instant case, whether or not CIH's motion for reconsideration and notice of appeal were timely filed. Pursuant to 14 DCMR 4013.1, "[a]ny party served with a final decision and order may file a motion for reconsideration with the hearing examiner within ten (10) days of receipt of that decision." In conjunction with this section, 14 DCMR 4013.6 states, "[t]he ten (10) day time limit in which an appeal to the Commission shall be filed, as prescribed in §216 of the Act and §3802.2, shall begin to run when the decision becomes final."

As previously stated, CIH filed a motion for reconsideration of the March 8, 2000 OAD decision, which was postmarked on March 21, 2000 by the United States Postal Service, and date-stamped on April 10, 2000 by OAD. The decision became final on March 8, 2000 and the housing provider subsequently had until March 27, 2000 to file independently either its motion for reconsideration in the RACD or its notice of appeal in the Commission, pursuant to 14 DCMR 3912.1, 3912.3 and 3912.5.[2] In the alternative, CIH had the opportunity to contemporaneously file its motion for reconsideration with

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[2] The regulation, 14 DCMR 3912.1, provides:

> In computing any period of time prescribed or allowed by the rules, the day of the act, event, or default from which the designated time period begins to run shall not be included.

The regulation, 14 DCMR 3912.3, provides:

> When the time period prescribed or allowed is ten (10) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

The regulation, 14 DCMR 3912.5, provides:

> If a party is required to serve papers within a prescribed period and does so by mail, three (3) days shall be added to the prescribed period to permit reasonable time for mail delivery.

RACD on or before March 27, 2000, and then file its notice of appeal with the Commission on or before April 27, 2000. However, CIH did not do so.

The record evidence, CIH's mailing envelope, indicates that the housing provider mailed its motion on March 21, 2000. However, pursuant to 14 DCMR 3901.11, "[a]ll pleadings and other filings shall be deemed filed when received and stamped by RACD during business hours on or before the date due." In addition, 14 DCMR 3901.10 states, "[n]o document shall be considered properly filed after the date on which the document is due for filing." (emphasis added). Since the motion was required to be received on or before March 27, 2000, but was instead date-stamped by OAD on April 10, 2000, the motion was not "properly filed." Id.

In its notice of appeal, CIH alleged that it promptly mailed a motion for reconsideration of the OAD decision on March 21, 2000, the date that their envelope was postmarked by the United States Postal Service. CIH also alleged that its motion was in strict compliance with the instructions set forth on page ten (10) of the decision and order dated March 8, 2000. See Notice of Appeal (N.) ¶¶ 7-8. The instructions directed the parties to mail motions for reconsideration to: Rental Accommodations and Conversion Division, P.O. Box 37140, Washington, D.C. 20013-7200. R. at 33. CIH's envelope, located in the OAD certified record, verifies that the envelope was properly addressed. The envelope was addressed to: Rental Accomodations [sic] and Conversion Division, P.O. Box 37140, Washington, D.C. 20013-7200. CIH also alleged that its basis for seeking reconsideration was a default judgment. See (N. ¶ 11.) Further, CIH stated that it made several inquiries in order to determine the status of its motion. See id. ¶ 12. CIH

then alleged that apparently "the address to which it mailed the appeal . . . was incorrect and the Respondent's Motion for Reconsideration languished unread." Id. ¶ 13. CIH explained its assumption by stating the following:

> That the Motion for Reconsideration was not located until April 10, 2000, when Counsel for Respondent pressed a staff member at the Office of Adjudication regarding the decision, and the Motion was then located, and (despite the fact that it had been in the possession of the Rental Accommodations and Conversion Division since approximately March 24, 2000) it was date stamped 'April 10, 2000.'

Id. ¶ 14. During the June 14, 2000 Commission hearing, CIH clarified this statement by speculating that the motion was sent to the correct office, but that it was improperly handled so that when it was finally date-stamped, it had been sitting in RACD for approximately three weeks. Record (tape) of Commission hearing (June 14, 2000).

One of the issues raised in CIH's notice of appeal is whether its motion for reconsideration was improperly handled by the OAD and then denied. Notwithstanding CIH's allegations, CIH did not indicate any record evidence that established that the motion for reconsideration was received by the OAD prior to April 10, 2000. In this case, the record evidence rebuts CIH's proffers. The substantial evidence in the record indicates that the housing provider's motion for reconsideration was received by OAD on April 10, 2000. Since CIH's motion for reconsideration was untimely, it follows that CIH's notice of appeal to the Commission was also untimely, because it was not filed within ten (10) days of the decision and order of the Rent Administrator, pursuant to 14 DCMR 3802.2. Therefore, the Commission concludes that CIH was "jurisdictionally barred from appealing." Hudley v. McNair, TP 24,040 (RHC June 20, 1999) (citing

Thomas v. District of Columbia Dep't of Employment Servs., 490 A.2d 1162, 1164 (D.C. 1985)).

III. PROCEDURAL ISSUE ON APPEAL

The housing provider raised one issue in its notice of appeal, and one issue during the Commission hearing on June 14, 2000. The issue is whether the housing provider's motion for reconsideration was improperly handled and denied by OAD.[3]

IV. DISCUSSION OF THE CASE

The Commission cannot reach the merits of the aforementioned procedural issues on appeal because CIH's motion for reconsideration was untimely. Since CIH did not file its notice of appeal within ten (10) days of the Rent Administrator's decision and order, it is also considered untimely and improperly filed. The Commission reaches this conclusion because CIH's motion for reconsideration was not received by RACD on or before March 27, 2000, as required by 14 DCMR 4013.1, nor was the notice of appeal received by the Commission on or before March 27, 2000 in order to be considered timely, as required by 14 DCMR 3802.2. In this case, CIH's motion for reconsideration and notice of appeal were untimely. In fact, the Commission received CIH's notice of appeal on April 13, 2000, which would have been timely, if the motion for reconsideration was timely; however, it was not.

In the alternative, even if CIH's motion for reconsideration and notice of appeal

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[3] The second issue, which was solely raised during the Commission hearing on June 14, 2000, and not in CIH's notice of appeal, was whether the hearing examiner failed to correctly calculate the amount of the rent refund. Pursuant to 14 DCMR 3807.4, "[r]eview by the Commission shall be limited to the issues raised in the notice of appeal; Provided, that the Commission may correct plain error."

This case is distinguished from Borger Management, Inc. v. Warren, TP 23,909 (RHC June 3, 1999), because in Borger, the movant raised the issue of mathematical errors in its notice of appeal. In this case, CIH did not raise the issue in its notice of appeal. Therefore, in accordance with 14 DCMR 3807.4, the Commission may not address the merits of the issue of mathematical errors on appeal.

were considered timely and properly filed, the Commission could not grant CIH the relief that it requested in its notice of appeal. In the notice of appeal, CIH stated that it "requests that the case be remanded to the Office of Adjudication for Reconsideration of Respondent's Motion for Reconsideration." (N. at 4.) However, pursuant to 14 DCMR 4013.3, "[t]he denial of a motion for reconsideration shall not be subject to reconsideration or appeal." Furthermore, 14 DCMR 4013.5 states that the "[f]ailure of a hearing examiner to act on a motion for reconsideration within the time limit presented by §4013.2 shall constitute a denial of the motion for reconsideration." Therefore, the relief that the housing provider sought in its notice of appeal, the appeal of the motion for reconsideration in order that the OAD could reconsider it, is a form of relief that the Commission is unable to grant. The District of Columbia Court of Appeals does not have jurisdiction to hear an appeal from the denial of a motion for reconsideration by an administrative agency. Totz v. Distirct of Columbia Rental Hous. Comm'n, 474 A.2d 827, 828 (D.C. 1984). Similarly, by regulation, the Commission cannot decide an appeal from a motion for reconsideration. See id.

In addition, CIH did not request that the Commission vacate the default judgment. CIH also did not mention the District of Columbia Court of Appeals test used by the Commission in order to analyze a case based on a default judgment. The District of Columbia Court of Appeals has identified the following four factors that the Commission must consider in order to determine whether to set aside a default judgment: (1) whether the movant received actual notice of the proceeding; (2) whether the movant acted in good faith; (3) whether the movant acted promptly; and (4) whether the movant presented a prima facie adequate defense. See Radwan v. District of Columbia Rental Hous. Comm'n, 683 A.2d 478, 481 (D.C. 1996). If CIH had raised the Radwan

test, it did not meet the burden of the first element of the test, because the actual receipt of the OAD notice of the hearing, which is one of the four factors in the test, is not in dispute. In fact, in its notice of appeal, CIH acknowledged that it received notice of the OAD hearing. See (N. ¶ 2.)

V. CONCLUSION

The substantial evidence in the record indicates that OAD received CIH's motion for reconsideration on April 10, 2000, and that the Commission received CIH's notice of appeal on April 13, 2000. CIH failed to submit record evidence that indicates otherwise. Therefore, since the motion for reconsideration, and the notice of appeal were both untimely and improperly filed, the Commission does not have jurisdiction to hear the case on appeal. Moreover, the Commission does not have jurisdiction to reconsider the denial of a motion for reconsideration. Accordingly, the OAD decision is affirmed.

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 24,817 was mailed by certified mail postage prepaid this **17th day of July, 2000** to:

Timothy P. Cole, Esquire
207 Baltimore Road
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and

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LaTonya Miles
Contact Representative