

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 24,910

In re: 4804 41st Street, N.W.

Ward Three (3)

JOYCE BURNETT
Tenant/Appellant

v.

AMAR NATH SHARMA
Housing Provider/Appellee

DECISION AND ORDER

July 10, 2001

PER CURIAM: This appeal is 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, "the 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 HISTORY

This appeal concerns the three (3) room single-family housing accommodation located at 4801 41st Street, N.W., owned by the housing provider/appellee, Amar N. Sharma. Joyce Burnett, the tenant/appellant, filed Tenant Petition (TP) 24,910 on February 14, 2000. In the petition, the tenant alleged: (1) the building in which the tenant's rental unit was located was not properly registered with the Rental Accommodations and Conversion Division (RACD); (2) the services and facilities

provided in connection with the rental unit were substantially reduced; (3) the housing provider engaged in retaliatory action against the tenant; and (4) an improper notice to vacate was served on the tenant.

The adjudicatory hearing was held on April 11, 2000. Hearing Examiner Carl Bradford presided at the hearing and issued the decision and order on July 31, 2000. The tenant filed an appeal on August 15, 2000. In preparation for the hearing, scheduled for October 5, 2000, the Commission attempted to review the recorded tape of the hearing held on April 11, 2000, but was unsuccessful. The Commission played the tape and discovered the tape was blank. In accordance with D.C. CODE § 45-2512,¹ the Commission must have a complete record on appeal, which includes the tape recording or transcript of the hearing held before the hearing examiner. See 14 DCMR § 3804.3. Due to an incomplete record, the Commission sua sponte, remanded the petition for a de novo hearing before Hearing Examiner Bradford. The remand was necessitated by the DCAPA, D.C. CODE §1-1509(c), which requires the agency to maintain an official record, including testimony and exhibits, in every contested case and 14 DCMR §§ 3804.3, 4006.1, and 4007.1(b), which require the hearing examiner to record the proceedings and maintain a copy of the hearing tape in the official record. The Commission's hearing scheduled for October 5, 2000 was cancelled.

By letter dated January 3, 2001, the tenant, Joyce Burnett, made a request to the

¹ D.C. CODE § 45-2512 (b)(1), provides in part: "The Rental Housing Commission may hold hearings, sit and act at times and places within the District, administer oaths, and require by subpoena or otherwise the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents as the Rental Housing Commission may consider advisable in carrying out its functions under this chapter."

OAD to withdraw her petition, because she asserted that she could not get a fair hearing before Hearing Examiner Bradford. There were no objections from the housing provider. On April 20, 2001, the hearing examiner granted the tenant's request to withdraw her petition, and he dismissed the petition with prejudice. On April 27, 2001, the tenant/appellant Joyce Burnett, filed a timely notice of appeal from the hearing examiner's decision. The tenant submitted a letter to the Commission on June 1, 2001, requesting the Commission to include new issues, in the upcoming hearing, which were not raised in the notice of appeal.² The Commission held its hearing on the matter on June 13, 2001.

II. ISSUE ON APPEAL

In the Notice of Appeal dated April 27, 2001, the tenant/appellant raised the following issue:

1. Whether the hearing examiner incorrectly applied the law when he dismissed TP 24,910 with prejudice after it was withdrawn.

III. DISCUSSION OF THE ISSUE

Whether the hearing examiner erred by dismissing, with prejudice, TP 24,910.

The Commission treats an Appellant's motion to withdraw a tenant petition as a voluntary dismissal. See Tenants of Wisconsin Ave., N.W. v. Kent, CI 20,013 (RHC May 18, 1989); Bowie v. Victor, TP 21,076 (RHC Apr. 28, 1989). The Commission's rules are silent on the treatment of voluntary dismissals. When the Commission's rules are silent on a procedural issue, the Commission relies on the Superior Court of the

² "The Commission shall not receive new evidence on appeal." 14 DCMR 3807.5. "Review by the Commission is limited to issues presented in the notice of appeal." 14 DCMR 3807.4. See also Tenants of 5415 Connecticut Avenue, N.W. v. Kenmore Apartments Joint Venture, CI 20,552 (RHC July 15, 1994).

District of Columbia Rules of Civil Procedure or the Rules of the District of Columbia Court of Appeals.³

Voluntary dismissals are governed by Super. Ct. Civ. R. 41(a)(1). It provides that a party may voluntarily dismiss an action by filing a stipulation of dismissal signed by all parties who have appeared in the action. Rule 41(a)(1) further provides, "unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice...." In this case, the housing provider did not object to the tenant's request to withdraw the petition. The hearing examiner dismissed the case with prejudice, although the tenant did not request that the case be dismissed with prejudice. The hearing examiner's dismissal with prejudice is akin to an involuntary dismissal under Super. Ct. Civ. R. 41(b).⁴

The District of Columbia Court of Appeals, in Atherton v. Brooks, 728 A.2d 1195 (D.C. 1999), held that a dismissal with prejudice under Rule 41(b) is a drastic measure and should only be exercised sparingly. In Atherton, the court further states as specific guidelines, that a dismissal with prejudice is only an appropriate sanction when there is "clear evidence of deliberate delay" or upon a showing of obstinate conduct by the plaintiff. Id. at 1203. In the case before us, there is no evidence in the record of deliberate delay or obstinate conduct by the tenant.

³ See 14 DCMR 3828.1 which provides: "When these rules [Commission's rules] are silent on a procedural issue before the Commission, that issue shall be decided by using as guidance the current rules of civil procedure published and followed by the Superior Court of the District of Columbia and the rules of the District of Columbia Court of Appeals." See D.C. Register, Vol. 45, No. 6 at 687 (Feb. 6, 1998).

⁴ Involuntary dismissal: Effect thereof. For failure of the plaintiff to prosecute or to comply with the rules or any order of the Court, a defendant may move for dismissal of an action or any claim against him.... Unless the Court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this Rule,... operates as an adjudication upon the merits." Super. Ct. Civ. R. 41(b).

Therefore, the hearing examiner erred when he dismissed the case with prejudice.

The Commission held in Middleton v. William J. Davis, Inc., TP 22,268 and 23,065 (RHC Dec. 30, 1994), that when a case is dismissed with a drastic sanction such as a dismissal with prejudice, the hearing examiner must provide an explanation for the decision. In Middleton, the hearing examiner dismissed an issue in the tenant's case with prejudice and did not provide any explanation for the drastic sanction. The Commission reversed the decision and ordered the tenant's issue to be dismissed without prejudice. Here, the examiner also dismissed appellant's case with prejudice, and did not provide an explanation for the dismissal with prejudice, which is an abuse of discretion.

The Commission derives authority to set aside any findings it determines to be an abuse of discretion, pursuant to 14 DCMR § 3807.1, which provides:

The Commission shall reverse final decisions of the Rent Administrator which the Commission finds to be based upon arbitrary action, capricious action, or an abuse of discretion, or which contain conclusions of law not in accordance with the provisions of the Act, or findings of fact unsupported by substantial evidence on the record of the proceedings before the Rent Administrator.

See D.C. Code §§ 1-1510(a)(3)(A), 1-1510(a)(3)(E).

Upon our review of the record in this case, the record does not support a dismissal with prejudice. Hearing Examiner Bradford failed to provide any conclusions of law supporting a dismissal with prejudice or to make any specific finding of deliberate delay or obstinate conduct by the tenant as required by Super. Ct. Civ. R. 41(b) for dismissal with prejudice.

IV. CONCLUSION

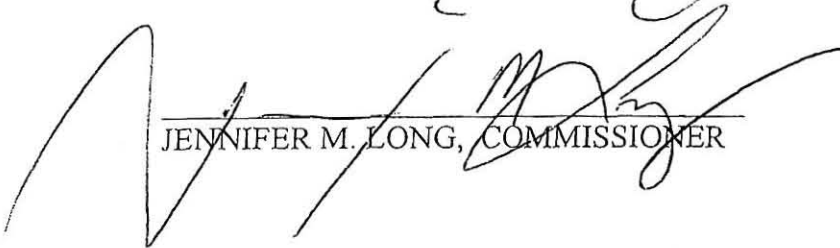
After a review of the lack of evidence in the record to support the dismissal with prejudice, the Commission concludes that the hearing examiner abused his discretion by dismissing TP 24,910 with prejudice in his April 20, 2001 decision. There was no evidence in the record supporting a dismissal with prejudice, and the hearing examiner did not provide an explanation for the dismissal with prejudice.

Accordingly, the decision of the hearing examiner is reversed and the case dismissed without prejudice in accordance with Super. Ct. Civ. R. 41(a)(1).

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON


RONALD A. YOUNG, COMMISSIONER


JENNIFER M. LONG, COMMISSIONER

CERTIFICATE OF SERVICE

I certify that copies of the foregoing Decision and Order in TP 24,910 was sent certified mail, postage prepaid, this **10th** day of July 2001 to:

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