

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 24,919

In re: 1908 Florida Avenue, N.W., Unit B 6

Ward One (1)

RONALD BAKER  
Tenant/Appellant

v.

BERNSTEIN MANAGEMENT CORPORATION  
Housing Provider/Appellee

**DECISION AND ORDER**

**August 15, 2002**

**BANKS, CHAIRPERSON.** This case is on appeal to the Rental Housing Commission from a decision and order issued by the Rent Administrator. The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 (1991) govern the proceedings.

**I. THE PROCEDURES**

On February 28, 2000, the Tenant filed Tenant Petition (TP) 24,919, which alleged: "The rent being charged exceeds the legally calculated rent ceiling for my/our unit." TP at 3. The Tenant wrote, "I have always paid \$300 for rent charged. Now the new management is trying to charge me at a \$400 rent charge with a \$28 increase. I am

being charged a total of \$128 on a rent charge that I was only paying \$300.” TP at 3.

Bernstein Management Corporation was the Housing Provider.

This is the Tenant’s second appeal to the Commission under this Tenant Petition number. The first appeal resulted in the Commission remanding this case to OAD for a de novo hearing, for a decision that contained findings of fact and conclusions of law on each contested issue of fact, and for the complete recording of the hearing. See Baker v. Bernstein Mgmt. Corp., TP 24,919 (RHC Sept. 29, 2000).

The OAD remand hearing was held on March 15, 2001 with Terry Michael Banks, hearing examiner, presiding. On September 26, 2001, OAD issued a proposed decision and order, and on October 16, 2001, OAD issued the final decision and order, which stated the Tenant failed,

to explain how any of these rent increases violated the Code. D.C. Code Section 42-3502.08(h)(1) prescribes [sic] a landlord from implementing more than one rent increase from any one authorized and previously unimplemented rent ceiling adjustment. Since there is no evidence in the record to indicate that Respondent [Housing Provider] violated this provision, Petitioner has failed to state grounds for altering the recommendation in the Proposed Decision and Order.

OAD Decision at 2.

On October 26, 2001, the Tenant filed an appeal in the Commission. The Housing Provider answered the appeal by stating, inter alia, that the Tenant was attempting to raise issues about other rent increases that were not claimed on the Tenant Petition, which challenged his rent increase from \$300 to \$428. See supra p. 1. The Commission held the hearing on the appeal on March 7, 2002.

## II. THE ISSUE

The issue raised on appeal is whether: "The examiner originally failed to render a decision on the question of whether the rent increase in July 1999 and thereafter were illegal. On reconsideration, the Examiner refused to amend the decision." Notice of Appeal (Notice) at 1.

## III. THE COMMISSION'S DECISION

### Preliminary Issue

#### **Whether the Commission has findings of fact and conclusions of law to review.**

The first appeal from the OAD decision was remanded by the Commission for findings of fact and conclusions of law. In violation of the Commission's instructions in its decision and order dated September 29, 2000, the second OAD decision, dated October 16, 2001, also fails to contain findings of fact and conclusions of law on each contested issue of fact. Specifically, the hearing examiner failed to make findings of fact on the date of the commencement of the tenancy, failed to make findings of fact on the first rent increase from \$294.00 to \$300.00 effective February 1, 1999, shown on the "Tenant Notice of Increase of General Applicability," Tenant (T.) Exhibit (Exh.) 1. The hearing examiner failed to make findings of fact on the second rent increase from \$300.00 to \$400.00 effective September 1, 1999, shown in the notice letter dated July 23, 1999 to the Tenant, T. Exh. 2. Thirdly, the hearing examiner failed to make a finding of fact on the increase in rent charged effective March 1, 2000 from \$400.00 to \$428.00, which is the last rent increase in the tenant petition, and reflected on the Tenant Notice of Increase of General Applicability, dated January 26, 2000, T. Exh. 4.

The hearing examiner is required to make findings of fact on all contested issues. D.C. OFFICIAL CODE § 2-509(e), Spevak v. District of Columbia ABC Bd, 407 A.2d 549 (D.C. 1979). A reviewing court, such as the Commission, must determine: 1) whether the agency has made a finding of fact on each material contested issue of fact, 2) whether substantial evidence supports the findings, and 3) whether the conclusions of law follow rationally from the findings. George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment, 429 A.2d 1342 (D.C. 1981). In this case the contested issues were raised in the petition and addressed in the Tenant's exhibits. The OAD decision in this appeal does not refer to the testimony or exhibits in any findings of fact and conclusions of law.

Nevertheless, the OAD final decision cited and quoted the applicable law at D.C. OFFICIAL CODE § 42-3502.08(h)(1) (2001) which states:

[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. (emphasis added.)

OAD Decision at 2.

Based on the above quoted provision of the Act, at a minimum, the OAD findings must state the applicable rent ceilings and rent charged, and contain findings of fact and conclusions of law on whether the rent ceilings and rents charged were properly increased. Borger Mgmt., Inc. v. Godfrey, TP 20,116 (RHC Sept. 4, 1987) aff'd, Winchester Van Buren Tenants Asso. v. District of Columbia Rental Hous. Comm'n, 550 A.2d 51 (D.C. 1988).

The rules provide at 14 DCMR § 4204.10 (1991):

Notwithstanding § 4204.9, a housing provider shall take and perfect a rent ceiling increase authorized by § 206(b) of the Act (an adjustment of general applicability) by filing with the Rent Administrator and serving on the affected tenant or tenants in the manner prescribed in § 4101.6 a Certificate of Election of Adjustment of General Applicability, which shall do the following:

...  
(c) Be filed and served within thirty (30) days following the date when the housing provider is first eligible to take the adjustment. (emphasis added).

See Council of the District of Columbia, Committee on Consumer and Regulatory Affairs, Committee Report, Bill 9-305, Unitary Rent Ceiling Adjustment Amendment Act of 1992 (Unitary Act) (July 14, 1992) at 4, (Council Report) which states, in part:

In enacting D.C. Code § 45-2518, the Council clearly intended to prevent housing providers from imposing more than one rent increase in any 180-day period, whether an increase in the base rent or due to multiple increases to the rent ceiling.

...

To prevent any confusion on this matter, the Committee has added a new subsection to make clear that a housing provider does not lose an authorized rent ceiling increase merely by delaying partial or full implementation. Once approved, a rent ceiling adjustment does not become invalid or expire because of postponed implementation.

The Committee recommends that **the Rent Administrator** require housing providers to identify the particular rent ceiling adjustment that is being implemented and provide written notice of its implementation to the tenant and Rental Accommodations and Conversions Division.

...

In discussion, Chairman [John] Ray pointed out that Bill 9-305 does not prevent housing providers from taking any rent increases due them after rent ceiling adjustments have been granted by the Rent Administrator. The bill does prohibit providers from lumping multiple rent increases together to reach the new ceiling, however, so that tenants are not hit with dramatic increases. (emphasis added.)

Council Report at 4 & 5 (emphasis added.)

In addition, the hearing examiner did not make findings of fact on the identity of the rent ceiling increase or portion of a rent ceiling increase that was being taken in the Tenant's rent charged increase,<sup>1</sup> and the hearing examiner failed to consider the requirement that the housing providers timely take and perfect the rent ceiling increases, 14 DCMR § 4204.10 (1991). The Tenant provided the testimony and documents for the findings of fact that were not made.

Moreover, the hearing examiner did not discuss whether the first rent increase was within less than six months (180 days) as proscribed by D.C. OFFICIAL CODE § 42-3502.08(g), Winchester, supra, 550 A.2d at 52, and as mentioned in the Council Report quoted above.

Accordingly, this case is remanded to OAD for findings of fact and conclusions of law on all contested issues, including issues that are known to the hearing examiner and may not be identified in this decision.

A de novo hearing is not ordered. See Wire Properties, Inc. v. District of Columbia Rental Hous. Comm'n, 476 A.2d 679, 682 (D.C. 1984) (where the court upheld the Commission's determination to deny a remand hearing when parties have had an opportunity to submit evidence in the record). This case must be decided on the record. The Commission recommends that the hearing examiner read the Commission's decision dated September 29, 2000 in this case, as well as, the OAD decision in TP 24,779, which was an exhibit before the hearing examiner (R. 46), OAD decision at 3, (Tr. at 21 & 36).

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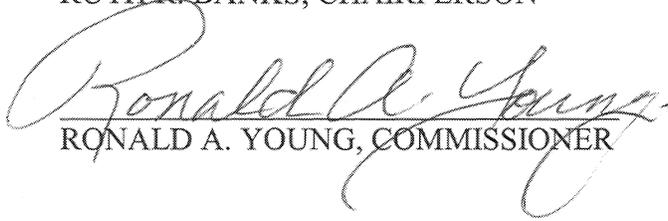
<sup>1</sup> See Lincoln Property Mgmt. v. Chibambo, TP 24,861 (RHC Nov. 29, 2000) at 5.

The issues raised in the notice of appeal are moot, due to the failure of the hearing examiner to make findings of fact and conclusions of law. This case is remanded, again, for findings of fact and conclusions of law on the proper rent charged and rent ceilings for the Tenant's rental unit, based on the existing record.

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON



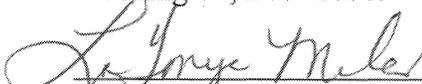
RONALD A. YOUNG, COMMISSIONER

#### CERTIFICATE OF SERVICE

I certify that a copy of the decision and order in TP 24,919 was mailed by priority mail, with confirmation of delivery, postage prepaid on the **16<sup>th</sup> day of August 2002** to:

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