DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 24,979

In re: 6980 Maple Street, N.W., Unit 12

Ward Four (4)

GBUTU-KLA BEDELL
Tenant/Appellant

v.

JOHN CLARK
Housing Provider/Appellee

DECISION AND ORDER

June 27, 2001

BANKS, CHAIRPERSON. 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, "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. THE PROCEDURES

Gbutu-Kla Bedell, the Tenant, filed Tenant Petition (TP) 24,979 on May 22, 2001. The petition alleged: 1) the rent increase was larger than the amount of increase which was allowed by the Act; 2) one hundred eighty (180) days had not passed since the last rent increase; 3) the Housing Provider

failed to file the proper rent increase forms; 4) the rent charged exceeded the legally calculated rent ceiling for the rental unit; 5) the rent ceiling filed was improper; 6) a rent increase was taken when the rental unit was not in substantial compliance; 7) services and facilities provided in connection with the rental unit were eliminated; 8) services and facilities provided in connection with the rental unit were substantially reduced; and 9) the Housing Provider directed retaliatory action against the Tenant.

The petition was scheduled for hearing on July 27, 2000, however, the certified file contains a motion for continuance filed by the attorney for the Housing Provider on that date. The certificate of service on the motion stated the motion was mailed earlier to the Tenant on July 10, 2000. The certified file does not contain an order or other notation that the motion for continuance was granted. Subsequently, on October 30, 2000, the attorney for the Housing Provider filed his Entry of Appearance in this case. The certified file contains two more relevant documents.. They are the settlement agreement, dated November 7, 2000, between the parties, and the order of Hearing Examiner Thomas Word dated November 17, 2000.

The settlement agreement stated, "[p]lease dismiss this case with prejudice as settled." It was signed by the Tenant,

the Housing Provider, and the Housing Provider's attorney. The OAD order stated in relevant part,

> Tenant Petition, (T/P) 24,979, was filed with the RACD on May 22, 2000. A hearing in this matter was scheduled for November 7, 2000. During the course of the hearing, the Parties entered into a settlement agreement, disposing of the issues raised in this complaint. (emphasis added.)
>
> Settlement Agreement
>
> The terms of the settlement agreement, entered into by the parties, are incorporated by reference into the record and attached to this Order.
>
> The District of Columbia Court of Appeals has held that the Rental Housing Commission must consider any settlement agreement entered by the parties in an attempt to resolve a dispute under the Act. See, [sic] Proctor v. District of Columbia Rental Housing Commission, [sic] 484 A.2d 542 (D.C. 1984). By logical extension, this also applies to all cases brought before the Office of the Rent Administrator.
>
> There is no evidence in the record indicating that the granting of Petitioner's motion would prejudice the opposing party in this action. Therefore, the Examiner accepts the settlement agreement, and grants Petitioner's Motion to Dismiss subject petition with prejudice.
>
> ORDER
>
> Therefore, it is hereby ORDERED this NOV 17, 2000 that: Tenant Petition 24,979 is DISMISSED WITH PREJUDICE.
>
> It is FURTHER ORDERED that [sic] This Order is effective immediately.

On April 2, 2001, the Rent Administrator gave the Tenant the following letter, which states in pertinent part:

> Dear Mr. Bedell:
> Review of your case indicates the following: 1) that the parties reached an agreement in this matter on or about November 7, 2000. An order was issued so stating. 2) That the landlord did not follow through on this agreement. The necessary repairs remain undone, even though the parties had reached an agreement on the matter. 3) That the decision in this

case was sent out to you by certified mail on or about November 17, 2000. That you did not receive the copy sent by certified mail. I, the Rent Administrator handed you a copy of the decision on March 30, 2001. 4) That this matter can still be appealed to the Rental Housing Commission pursuant to their guidelines contained in the decision. This is possible because you did not receive the Decision and Order until I handed it to you on Friday, March 30, 2001.

On April 9, 2001, the Tenant filed the following Notice of Appeal in the Commission:

> Name of Appellant, hereby appeals the Rent Administrator's decision and order of Nov. 17, 2000, and asserts the following. I [] Gbutu-Kla Bedell [] entered into an agreement with Mr. John Clark at which time Mr. Clark agreed and promised to make all repairs in my apartment and he would make no more repairs when I move out on 03-31-01.
>
> Mr. Clark has refused to make the repairs, and he told the D.C. Landlord/Tenant Court that he has made all repairs that he agreed to make but Mr. Clark has not made one repair yet, instead he is trying to get me and my family evicted out of my apartment.
>
> The fact that I did not received [sic] the decision in my case by certified mail, instead, Mrs. Christina Northern (Rent Administrator) hand delivered it to me on Friday, March 30, 2001, I am appealing to, cont. you to use your good offices to reconsidered [sic] my agreement with Mr. Clark and that I would like a hearing in my case. (emphasis added.)
>
> Enclose [sic], please find some photos of my apartment and a letter from Christina Northern (Rent Administrator) a letter from me to the Office of Adjudication. Hope that these would be of help in your decision of my appeal. (emphasis added.)
>
> Wherefore, GbutuKla [sic] Bedell prays that the Rent Administrator's decision and order be [sic].

Attached to the notice of appeal was a copy of a document requesting reconsideration of the settlement agreement, however,

it did not have an OAD file stamped date on it or certificate of service.

On April 16, 2001, after the appeal was filed and before the Commission received the certified record, the Tenant appeared in the Commission and requested a letter stating that he had an appeal pending in the Commission. The Chairperson gave him a letter and sent a copy of the letter to the Housing Provider's attorney. The Commission held its hearing on June 12, 2001.

II. APPEAL ISSUES

The following are the issues from the notice of appeal:

A. Whether substantial evidence in the record supported the Tenant's assertion that he "entered into an agreement with Mr. John Clark [the Housing Provider who] ... agreed and promised to make all repairs in the Tenant's rental unit."

B. Whether the substantial evidence in the record supports the Tenant's assertion that the Housing Provider "refused to make the agreed upon repairs, and he told the D.C. Landlord/Tenant Court that he has made all repairs that he agreed to make but [the Housing Provider] ha[d] not made one repair."

C. Whether the substantial evidence in the record supports the Tenant's assertion that the Housing Provider tried to evict the Tenant from the rental unit.

D. Whether the Commission may consider on appeal the photographs of the rental unit.

E. Whether the Commission may review the document referred in and attached to the notice of appeal.

See Notice of Appeal at 1-2.

III. THE PRELIMINARY ISSUE

Whether the notice of appeal was timely filed and whether the Commission has jurisdiction.

The Rental Housing Act of 1985 (Act) provides that appeals may be taken to the Commission from the decisions of the Rent Administrator within ten (10) days after the decision of the Rent Administrator. See D.C. CODE § 45-2526(h).

The Commission is required by law to dismiss appeals that are untimely filed, because time limits are mandatory and jurisdictional. United States v. Robinson, 361 U.S. 209 (1960); Hija Lee Yu v. District of Columbia Rental Hous. Comm'n, 505 A.2d 1310 (D.C. 1986); Totz v. District of Columbia Rental Hous. Comm'n, 474 A.2d 827 (D.C. 1974). The Commission determines the time period between the issuance of the OAD decision and the filing of the notice of appeal by counting only business days, as required by its rules. The Commission's regulation, 14 DCMR § 3802.2, states, "[a] notice of appeal shall be filed by the aggrieved party within ten (10) days after a final decision of the Rent Administrator is issued," Town Center v. District of Columbia Rental Hous. Comm'n, 496 A.2d 264 (D.C. 1985).

Both parties in the instant appeal raised the jurisdiction of the Commission, based on whether the notice of appeal was

timely filed.[1] The Tenant stated in the notice of appeal that he did not receive the OAD order dated November 17, 2000, however, he did receive that order by hand from the Rent Administrator on March 30, 2001. On June 12, 2001, at the Commission's hearing, the attorney for the Housing Provider argued that the Tenant's appeal was untimely filed, because the hearing examiner's order was mailed on November 17, 2000, and the ten-day period for filing the notice of appeal expired before March 30, 2001, when the Tenant received the OAD order from the Rent Administrator.

The Act provides at D.C. CODE § 45-2526(j):

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[1] The Commission determines jurisdiction as a preliminary issue. See Killingham v. Wilshire Investment Co., TP 23,881 (RHC Sept. 30, 1999) at 4-6 (where the attorney for the housing provider, the non appealing party, raised the Commission's jurisdiction in the brief filed in the Commission. The Commission's decision and order ruled on jurisdiction, as a preliminary issue, prior to ruling on the issues raised by Killingham, the tenant/appellant, in her notice of appeal. Generally, issues not raised before the agency, but raised for the first time on appeal, i.e., in a brief, are not considered. Greer v. Davenport, TP 23,536 (RHC Feb. 19, 1998) at 3. However, jurisdiction is the exception, as the decision in Killingham demonstrates. In the instant case, both parties raised jurisdiction. In the notice of appeal, the tenant raised jurisdiction when he explained when (March 30, 2001) and from whom (the Rent Administrator) he received the November 17, 2000 order. The housing provider's attorney asserted at the Commission's hearing on the appeal, that the notice of appeal was untimely filed, because it was filed more than ten days after the issuance of the order. In addition, the Commission may sua sponte raise the issue of timeliness of the notice of appeal, where the record supports such an inquiry, because jurisdiction depends on timely filed appeals. Outten v. Legum & Norman, Inc., TP 23,253 (RHC June 11, 1998), Morrison v. Stanley, TP 24,380 (RHC June 11, 1998). Cf. Mersha v. Marina View Tower Apartments, TP 24,302 (RHC May 9, 2000) (where the Commission considered and ruled on a motion to dismiss the tenant's appeal, as a preliminary issue, based on non compliance with the Commission's appeal rule, which was raised in the housing provider's brief, not a cross appeal.) In the instant case, the motion to dismiss was stated in the argument by counsel for the Housing Provider during the Commission's hearing, and therefore, is a preliminary issue. CD of RHC Hearing June 12, 2001.

> A copy of the decision made by the Rent Administrator, or by the Rental Housing Commission under this section shall be mailed by certified mail or other form of service which assures delivery of the decision to the parties.

The DCAPA provides at D.C. Code § 1-1509(c):

> A copy of the decision and order and accompanying findings and conclusions shall be given by the Mayor or the agency, as the case may be, to each party or to his attorney of record.

The OAD certified record did not contain proof of delivery of the decision by certified mail or other form of service in conformity with the Act. See Joyce v. District of Columbia Rental Hous. Comm'n, 741 A.2d 24 (D.C. 1999). Accordingly, when the Rent Administrator delivered a copy of the OAD order by hand directly to the Tenant on March 30, 2001, supra at 4, the delivery by hand to the Tenant was "other form of service which assures delivery of the decision to the parties" in accordance with the Act, D.C. CODE § 45-2526(j), and the requirement of the DCAPA, D.C. CODE § 1-1509(e), that every decision be given to each party. Accordingly, in this case, the effect of the hand delivery of the decision and order by the Rent Administrator directly to the Tenant was to effectuate proper delivery of the decision to the Tenant and to cause the ten (10) day appeal period in D.C. CODE § 45-2526(h) to commence. When the Tenant filed the notice of appeal in the Commission on April 9, 2001, it was within ten (10) days after March 30, 2001, and therefore,

timely filed. Therefore, the motion to dismiss the Tenant's appeal argued by the Housing Provider's counsel is denied.

IV. THE DISCUSSION OF THE APPEAL ISSUES

A. Whether substantial evidence in the record supported the Tenant's assertion that he "entered into an agreement with Mr. John Clark [the Housing Provider who] … agreed and promised to make all repairs in the Tenant's rental unit.

This issue begs the question whether there was an agreement in the OAD certified record between the Tenant and the Housing Provider. The Act limits the Commission to the review of the certified record of a petition on appeal. D.C. CODE § 45-2526(h), in pertinent part states:

> Decisions of the Rent Administrator shall be made on the record relating to any petition filed with the Rent Administrator. … The Rental Housing Commission may reverse, in whole or in part, any decision of the Rent Administrator which it finds to be arbitrary, capricious, an abuse of discretion, not in accordance with the provisions of this chapter, or unsupported by substantial evidence on the record of the proceedings before the Rent Administrator, or it may affirm, in whole or in part, the Rent Administrator's decision.

The DCAPA, D.C. CODE § 1-1509(a), states:

> Unless otherwise required by law, other than this subchapter, any contested case may be disposed of by stipulation, agreed settlement, consent order, or default. (emphasis added.)

The DCAPA, D.C. CODE § 1-1509(e) states:

> Every decision and order adverse to a party to the case, rendered by the Mayor or an agency in a contested case, shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise

> statement of the conclusions upon each contested issue of fact. Findings of fact and conclusions of law shall be supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision and order and accompanying findings and conclusions shall be given by the Mayor or the agency, as the case may be, to each party or to his attorney of record.

The court in Proctor v. District of Columbia Rental Hous. Comm'n, 484 A.2d 542, 547 (D.C. 1984) stated, "the agency must consider the [settlement] proposal on its merits as a possible basis for the agency's order." (emphasis added.)

The settlement agreement stated, "[p]lease dismiss this case with prejudice as settled." This brief statement presents two problems. First, there are no terms of the settlement agreement in the record. Therefore, neither the hearing examiner nor the Commission can comply with Proctor, because it has no "merits" to review as the basis for the OAD order, which dismissed the Tenant's petition as settled. Second, there is nothing in the certified record for the Commission to determine whether the Housing Provider agreed to make repairs, as asserted by the Tenant. Since the settlement agreement in the record simply stated, "[p]lease dismiss this case with prejudice as settled," the certified record does not support the statement by the hearing examiner, "the terms of the settlement agreement, entered into by the parties, are incorporated by reference into the record and attached to this Order." No "terms" are in the

certified record for the Commission's review. See text of order, supra, at 3. Therefore, the statement that the terms of the settlement agreement are incorporated and attached to the order of the hearing examiner are not supported by substantial evidence in the record. In addition, the hearing examiner did not make findings of fact in accordance with D.C. CODE § 1-1509(e). The reason is clear, he had nothing before him to make the findings of fact, as required by the DCAPA.

Finally, Proctor requires the Commission to consider:

> 1) the extent to which [the settlement agreement] enjoys support among the affected tenants, 2) its potential for finally resolving the dispute, 3) the fairness of the proposal to all affected persons, 4) the saving of litigation costs to the parties, and 5) the difficulty of arriving at a prompt, final evaluation of the merits, given the complexity of the law and the delays inherent in the administrative and judicial processes.

Proctor 484 A.2d at 548. The Commission is unable to consider the five factors listed in Proctor, because contrary to the statement in the hearing examiner's order, the settlement agreement did not contain the terms of the settlement that disposed of the issues in the petition. Supra, at 3.

The attorney for the Housing Provider argued to the Commission at the Commission's hearing that this case be remanded for insertion of the settlement agreement into the record. He informed the Commission at its hearing that he wrote the settlement agreement at the Superior Court, on the same day,

after the OAD proceedings, to settle matters pending in Landlord and Tenant Branch of the Superior Court. However, the court in Wire Properties v. District of Columbia Rental Hous. Comm'n, 476 A.2d 679, 682 (D.C. 1984) affirmed the denial of a similar request for remand to insert documentation for a claimed management fee, which was denied. The court stated:

> 'Opportunity only knocks once.' ... the [housing provider had its opportunity at the hearing before the Rent Administrator to provide sufficient documentation to support its claimed management fee.

In the instant case, the Housing Provider had opportunity to submit the settlement agreement to OAD, prior to this appeal. He cannot introduce evidence for the first time on appeal. In re O.M., 565 A.2d 573, 578, n.11 (D.C. 1989), Cobb v. Standard Drug Store, 453 A.2d 110, 111-112 (D.C. 1982). Based on Proctor and Wire Properties, the Commission must remand this case for a de novo hearing, because the certified record does not support the conclusion in the OAD order that this case was settled. The hearing examiner is reversed and this case is remanded for de novo hearing.

B. Whether the Housing Provider "refused to make the repairs, and he told the D.C. Landlord/Tenant Court that he has made all repairs that he agreed to make...."

The DCAPA provides, "[i]n contested cases, except as may otherwise be provided by law, other than this subchapter, the proponent of a rule or order shall have the burden of proof."

Cf. Columbia Realty Venture v. District of Columbia Rental Hous. Comm'n, 590 A.2d 1043 (D.C. 1991)(holding that the party asserting a specific fact has the burden of proving that fact). See also 14 DCMR § 4003.1, which states, "[t]he proponent of a rule or order shall have the burden of establishing each finding of fact essential to the rule or order by a preponderance of evidence."

The Tenant submitted nothing into the certified record to support the statement that the Housing Provider made an agreement to repair. The Tenant did not submit in OAD a copy of an agreement or transcript of the Superior Court proceedings or other evidence of the Housing Provider's agreement or statements. Therefore, this issue is unsupported by substantial evidence in the certified record. Accordingly, this issue is denied and the hearing examiner is affirmed.

C. Whether the Commission may consider the Tenant's photographs of the rental unit?

The Tenant wrote the following in the notice of appeal:

> Enclose [sic], please find some photos of my apartment …. Hope that these would be of help in your decision of my appeal. (emphasis added.)

Notice, supra, p. 4.

The Commission is limited to reviewing the record up to the time the record is closed. Harris v. District of Columbia Rental Hous. Comm'n, 505 A.2d 66 (D.C. 1986); D.C. CODE § 45-

2526(h). The Commission cannot consider new evidence on appeal that was not in the OAD record at the time the OAD record closed. See 14 DCMR § 3807.5, cited in Assalaam v. Lipinsky, TP 24,726 & 24,800 (RHC Aug. 25, 2000). Accordingly, the Commission cannot consider the photographs submitted by the Tenant to the Commission on appeal rather than in the OAD proceedings. The Tenant's request that the Commission consider the photographs in his appeal is denied as moot,[2] since this case is remanded for a hearing de novo. This issue is denied.

D. Whether the Commission may consider the Tenant's letter [motion for reconsideration] to OAD?

The notice of appeal stated:

> Enclose [sic], please find ... a letter from me to the Office of Adjudication. Hope that [this is] help[ful] in your decision of my appeal. (emphasis added.)

Notice at 2.

The letter requested reconsideration of the settlement agreement between the Housing Provider and the Tenant. The letter did not have a certificate of service, pursuant to 14 DCMR § 3911.7, to show service on the Housing Provider's attorney as required by 14 DCMR § 3911.1. In addition, motions for reconsideration are made pursuant to 14 DCMR § 4013, and are not appealable, 14 DCMR § 4013.3.

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[2] Joyce v. Webb, TP 20,720 & TP 20,730 (RHC Jan. 30, 1998) at 12, rev'd on other grounds, in Joyce v. District of Columbia Rental Hous. Comm'n, 741 A.2d 24 (D.C. 1999) (where after discussion of related issues the Commission determined an issue was moot). Here, the issue is moot due to the Commission's decision that the appeal is remanded for a de novo hearing.

The Tenant did not follow the agency rules for filing documents. The letter to OAD sought reconsideration of a ruling, but did not have a certificate of service, pursuant to 14 DCMR § 3911.7, showing service[3] in compliance with 14 DCMR § 3911.6. Generally, pro se litigants, like the Tenant, must comply with all the applicable rules and procedures, and cannot expect preferential treatment. See Abell v. Wang, 697 A.2d 796, 804 (D.C. 1997), Terrace Manor Ltd. Partnership v. Tillery, No. SC 13391-98 (D.C. Super. Ct. May 29, 2001). However, pro se litigants, whose action is brought under a remedial statute like the Act, which relies on lay persons to initiate and litigate the administrative or judicial proceedings, may be offered technical assistance. Id. This decision advised the Tenant of the rules he failed to follow and thereby gave him technical assistance to follow in future pleadings. For example, all documents filed in the agency, must have a certificate of service on the Housing Provider's counsel, as stated above. This issue is denied.

E. Whether the substantial evidence in the record supports the Tenant's assertion that the Housing Provider tried to evict the Tenant from the rental unit.

The Act provides for protection from unlawful evictions. See D.C. CODE § 45-2551. The Tenant submitted nothing into the

[3] The rule, 14 DCMR § 3811.6, provides: "[p]leadings, and other document[s] shall be served on the other parties prior to or at the same time as filed with the hearing examiner."

certified record to support the statement that the Housing Provider made an attempt to evict him. The Tenant did not submit in the OAD proceedings a copy of any document from Superior Court or other evidence of the Housing Provider's alleged attempts to evict him, or offer testimony in OAD about the alleged eviction. Therefore, this issue is unsupported by substantial evidence in the certified record, similar to issue B above. See D.C. CODE § 45-2526(h). Accordingly, this issue is denied.

V. CONCLUSION

The Commission has jurisdiction to determine the issues raised in the notice of appeal. This case is remanded for a de novo hearing due to the failure of the parties to submit a settlement agreement for review that contained disposal of the issues before the hearing examiner. At the de novo hearing in this case, the Tenant will have the opportunity to present the

evidence on the issues in his case, subject to the rulings of the hearing examiner on relevancy, materiality, and repetitious evidence. D.C. CODE § 1-1509(b).

SO ORDERED.

RUTH B. 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 24,979 was served by certified mail this **27th day of June, 2001** on:

Gbutu-Kla Bedell
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Apartment 12
Washington, D.C. 20012

John Clark
c/o Morris R. Battino, Esquire
1200 Perry Street, N.E.
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Washington, D.C. 20017

LaTonya Miles
Contact Representative