

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 24,983

In re: 600 9th Street, N.E.

Ward Five (5)

DARNISE DAVIS
Tenant/Appellant

v.

DONALD R. MADDEN
Housing Provider/Appellee

ORDER ON MOTION TO DISMISS APPEAL

November 15, 2001

YOUNG, COMMISSIONER. On July 27, 2001, the Office of Adjudication (OAD) issued the decision and order in this appeal, and on August 1, 2001, OAD issued an amended decision and order, which made corrections to the caption of the decision, but not to the text of the decision. In addition, on August 1, 2001, Darnise Davis, the tenant/appellant, filed a notice of appeal from the amended decision. On September 27, 2001, Donald R. Madden, the housing provider/appellee, filed a motion to dismiss the appeal for two reasons. He asserted that the appeal was untimely filed, because it was not filed from the August 1, 2001 amended decision and order, and that the notice of appeal did not sufficiently state the errors in the decision and order. The housing provider's motion is denied for the reasons stated below.

I. Whether the Tenant Timely Filed the Notice of Appeal.

The housing provider argued in the motion to dismiss that the tenant appealed from the original decision and order dated July 27, 2001, but not the amended decision

and order dated August 1, 2001. The housing provider contends that the appeal was improper from the first decision rather than the second or amended decision. A review of the notice of appeal showed the tenant wrote, "August 1, 2001" as the date of the Rent Administrator's decision and order on the preprinted form for appeals.

The Rental Housing Act of 1985 provides that appeals may be made to the Commission from the decisions of the Rent Administrator within ten (10) days of the Rent Administrator's decision. D.C. OFFICIAL CODE § 42-3502.16(h). The Commission's rules state, "[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; and if the decision is served by mail an additional three (3) days shall be allowed." 14 DCMR § 3802.2. 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. See 14 DCMR § 3802.2; Town Center v. District of Columbia Rental Hous. Comm'n, 496 A.2d 264 (D.C. 1985).

In this case, both the amended decision and the decision referred to in the notice of appeal were dated August 1, 2001. The notice of appeal filed by the tenant was dated August 1, 2001, and referenced the amended OAD decision and order dated August 1, 2001. Therefore, the tenant timely appealed from the amended decision and order on the day it was issued. Accordingly, this issue is denied.

II. Whether the Tenant's Notice of Appeal Alleged Error(s) in the Rent Administrator's Decision and Order.

The issue raised by the housing provider involves the adequacy of the text in the tenant's notice of appeal and whether the tenant properly alleged errors in the Rent Administrator's decision and order, which can be reviewed by the Commission under the

Act. In his motion to dismiss the appeal, the housing provider argues: "Appellant's Notice of Appeal was required to set forth the specific basis or bases of the appeal. Further the Notice of Appeal had to be grounded upon the evidence in the record or on the law applied in the Decision and Order." Motion to Dismiss Appeal at 1.

The Commission's regulation, 14 DCMR § 3802.5, provides the following:

The notice of appeal shall contain:

- (a) The name and address of the appellant and the status of the appellant (e.g., housing provider, tenant or intervenor);
- (b) 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;
- (c) The signature of the appellant or the appellant's attorney, or other person authorized to represent the appellant; and
- (d) The signatory's address and telephone number.

In his findings of fact the hearing examiner stated, in part:

7. At the time the petition was filed, the housing accommodation did not have excessive or prolonged violations of the housing regulations affecting Petitioner's health, safety, or security, or the habitability of the housing accommodation. As of the date of the hearing in this proceeding, May 30, 2001, the housing accommodation did not have excessive or prolonged violations of the housing regulations affecting Petitioner's health, safety, or security, or the habitability of the housing accommodation.
8. Petitioner did not establish that Respondent failed to correct the housing deficiencies listed on the Housing deficiency [sic] Notice of April 16, 1999 once he was put on notice of the deficiencies.
9. Petitioner has failed to establish that that [sic] any of the alleged deficiencies adversely affected her health, welfare, or safety.

Davis v. Madden, TP 24,983 (OAD July 27, 2001) at 4.

In his conclusions of law the hearing examiner stated:

1. In early 2000, when Respondent informed Petitioner that he intended to raise her rent, Respondent was not entitled to raise Petitioner's rent, because the housing accommodation was not properly registered with DCRA.
2. Petitioner has not met her burden of proving services or facilities provided in connection with the housing accommodation have been substantially reduced or permanently eliminated. Therefore, Petitioner is not entitled to an adjustment of her rent.
3. Respondent's proposal to raise Petitioner's rent was not made in retaliation to Petitioner's solicitation of a housing inspection.

Id. at 8. (footnotes omitted).

On appeal, the tenant stated: "Safety, welfare [and] health was an issue when appellant went months with no heat, mildew in garage from leaking over a year. Leaking in office (ceiling literally down) for over a year. Appellee has [and] continue[s] to harass Appellant because the Housing Accommodation [sic] was inspected." The tenant has asserted that the hearing examiner erred in his findings of fact that at the time the petition was filed, the housing accommodation did not have excessive or prolonged violations of the housing code.

In this case the tenant's notice of appeal stated that, "safety, welfare [and] health was an issue." Appeal at 1.¹ In his findings of fact the examiner himself framed the issue appealed by the tenant, the hearing examiner stated, "[a]t the time the petition was filed, the housing accommodation did not have excessive or prolonged violations of the housing regulations affecting Petitioner's health, safety, or security, or the habitability of the housing accommodation." Id. at 4. In her notice of appeal the tenant asserts that the hearing examiner erred in his findings of fact regarding her safety, health, and welfare. She contends that the finding was in error because, "appellant went months with no heat,

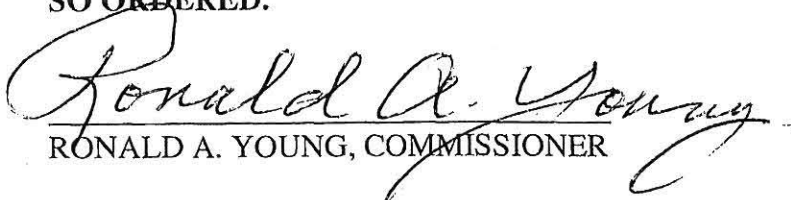
¹ The tenant's notice of appeal was submitted on a form attached as an appendix to Title 14, District of Columbia Municipal Regulations. Form 1, Appendix 44-1, is the Notice of Appeal form used by the tenant.

mildew in garage from leaking over a year [and] [l]eaking in office (ceiling literally down) for over a year.” Notice of Appeal at 1.

The Commission's review is limited to the issues that the appellant raises in the notice of appeal. See 14 DCMR § 3807.4. In accordance with 14 DCMR § 3802.5(b), the notice of appeal must contain a clear and concise statement of the alleged error in the Rent Administrator's decision. The purpose of the regulation is to provide the Commission with the subject matter for review and to place the opposing party on notice of the issues on appeal. The tenant's notice of appeal fulfills the requirements of the Commission's regulations at 14 DCMR § 3802.5(b). The tenant has put the Commission and the housing provider on notice that she intends to contest the hearing examiner's finding that “the housing accommodation did not have excessive or prolonged violations of the housing regulations affecting Petitioner's health, safety, and security.”

Accordingly, the housing provider's motion to dismiss the appeal for failure to set forth the specific basis or bases of the appeal is denied.

SO ORDERED.


RONALD A. YOUNG, COMMISSIONER

BANKS, CHAIRPERSON, concurring. I concur that the Tenant's Notice of Appeal sufficiently raised the issue of reduction of services and facilities, after the comparison of the notice of appeal with the findings of fact in the decision and order. Cf. Gardiner v. Charles C. Davis Real Management Realty, TP 24,955 (May 11, 2001) (Banks, dissenting at 16-18) citing Wallace v. Warehouse Employees Union, 482 A.2d 801 (D.C. 1984) n.29, citing Coleman v. Lee Washington Hauling Co., 388 A.2d at 45, n.1.


RUTH R. BANKS, CHAIRPERSON

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER on MOTION to DISMISS APPEAL** in TP 24,983 was delivered by hand, this 15th day of November, 2001, to:

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PROOF OF SERVICE

I certify that a copy of the foregoing **ORDER on MOTION to DISMISS APPEAL** in TP 24,983 was delivered to me by hand, this 15th day of November, 2001.

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