

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,067

In re: 1801 16th Street, N.W.

Ward One (1)

PATRICK DOYLE
SOMERSET TENANTS ASSOCIATION INC.
Tenants/Appellants

v.

PINNACLE MANAGEMENT COMPANY
Housing Provider/Appellee

DECISION AND ORDER

December 20, 2001

YOUNG, COMMISSIONER: This case is on appeal 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. OFFICIAL CODE § 42-3501.01 et seq., and the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE § 2-501, et seq.¹ The regulations, 14 DCMR § 3800 et seq., also apply.

I. PROCEDURAL HISTORY

Patrick Doyle² filed Tenant Petition (TP) 27,067, with the Rental Accommodations and Conversion Division (RACD), on March 30, 2001. In the petition,

¹ The Council of the District of Columbia issued the "D.C. Official Code" in 2001.

² The record reflects that Patrick Doyle filed the tenant petition on behalf of the Somerset Tenants Association, as the tenants' representative. The OAD decision and order named Patrick Doyle only. Pursuant to 14 DCMR § 3807.4, the Commission corrects the plain error of the hearing examiner and adds the Somerset Tenants Association on its own motion. See 14 DCMR § 3809.3.

Patrick Doyle, on behalf of the Somerset Tenants Association, alleged that the housing provider, Pinnacle Management Company (Pinnacle), the managing agent of the 84 unit housing accommodation located at 1801 16th Street, N.W, permanently reduced the services and facilities at the housing accommodation by closing the roof deck which was previously available to the tenants.

On August 9, 2001, an Office of Adjudication (OAD) hearing was held with hearing examiner Terry Michael Banks presiding. The hearing examiner issued his decision and order on September 7, 2001. In his decision the hearing examiner stated:

Tenant Petition (TP) 27,067 was filed with RACD on March 30, 2001. Notice of the date, time and place of the hearing, 9:00 a.m. on August 9, 2001, was furnished to the parties in accordance with D.C. Code Section 42-3502.16(c) (2001). Agency records indicate that notice of the hearing was mailed to the parties at the addresses indicated in the petition. Therefore, both parties received proper notice of the hearing. The Petitioner failed to appear at the hearing.

Doyle v. Pinnacle Management Co., TP 27,067 (OAD Sept. 7, 2001) at 1. Because the tenant failed to appear at the OAD hearing, the hearing examiner dismissed the petition in TP 27,067, with prejudice. Doyle filed a Motion for Reconsideration of the hearing examiner's decision and order with OAD on September 12, 2001. In the motion Doyle stated: "I am requesting this reconsideration based on two crucial circumstances; first is the fact that I did not receive the initial hearing notice that was mailed to me at the above address on August 4th, 2001." The hearing examiner failed to rule on the motion, and it was denied by operation of law pursuant to 14 DCMR § 4013.5.

II. ISSUES ON APPEAL

The tenants' representative filed a Notice of Appeal of the September 7, 2001 decision with the Commission. In the Notice of Appeal, he argued on behalf of the tenants: 1) The decision was the result of a default judgment; 2) the Decision and Order

contains technical errors; and 3) the petitioner's failure to appear is do [sic] to circumstances beyond the control of the petitioner. The tenants' representative also stated, "I am appealing ... on the grounds that the petitioner failed to appear upon receiving proper notice."

III. DISCUSSION OF THE PRELIMINARY ISSUE

The preliminary issue on appeal is whether the record certified to the Commission, by OAD, contains proof of service to the tenants as required by the Act. The Act at D.C. OFFICIAL CODE § 42-3502.16(c) states:

If a hearing is requested timely by either party, notice of the time and place of the hearing shall be furnished the parties by certified mail or other form of service which assures delivery at least 15 days before commencement of the hearing. The notice shall inform each of the parties of the party's right to retain legal counsel to represent the party at the hearing. (emphasis added).

The Commission reviewed the OAD certified record for this case. The record does not contain receipts for certified mail addressed to the housing provider or the tenants. The document that indicates service on the parties is the Domestic Return Receipt, referred to as the green card. The certified file did not contain the Domestic Return Receipts for this case. They would have shown whether the notice of hearing was delivered to the tenants' representative as is required by D.C. OFFICIAL CODE § 42-3502.16. The Commission further notes that the record certified to the Commission does not contain a copy of the Notice of Hearing to the parties. The applicable Commission regulation provides that the certified record on appeal shall consist of notices of hearing and proofs of service. See 14 DCMR § 3804.3(e).

The failure of the certified record to contain proof of delivery of the certified mail notice of the hearing to the tenants' representative prevents the Commission's determination that the tenants' representative received notice of the hearing by certified

mail or other method that ensures delivery, as required by the Act and the DCAPA. See Joyce v. District of Columbia Rental Hous. Comm'n, 741 A.2d 24 (D.C. 1999); Barnes v. MacDonald, TP 25,070 (RHC Oct. 10, 2001); Dias v. Perry, TP 24,379 (RHC Dec. 27, 1999). Therefore, this issue is granted and the Rent Administrator's decision dismissing the petition is reversed.

IV. CONCLUSION

The decision of the hearing examiner is reversed and remanded to the hearing examiner. This case is remanded for a hearing de novo with instructions for the Rent Administrator to assure delivery of the hearing notices before holding the hearing. All other issues raised by the tenants on appeal to the Commission are denied as moot.

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 27,067 was mailed postage prepaid, by certified mail, this **20th day of December, 2001** to:

Somerset Tenants Association
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