

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,106

In re: 1032 6th Street, N. E.

Ward Six (6)

ANTONIO G. VANN
KEITH A. ALBERTS
Tenants/Appellants

v.

KENNETH POGUE
Housing Provider/Appellee

ORDER ON SPECIAL REQUEST FOR APPEAL

May 22, 2003

BANKS, CHAIRPERSON. On March 12, 2002, the Office of Adjudication issued the decision and order in TP 27,106. On March 14, 2003, Antonio G. Van and Keith A. Alberts, Tenants, filed in the Commission a special request for reconsideration/appeal [notice of appeal]. The notice asserted and alleged that the decision and order issued by the Office of Adjudication (OAD) was confusing, because it mentioned treble damages, but ultimately dismissed the tenant petition with prejudice. The Commission noted the decision also stated that the Tenants failed to prove their rent ceilings. The Tenants allege that they contacted OAD for clarification, and spoke with a paralegal, who assured them that they won a favorable ruling in the OAD decision and order. Therefore, the Tenants did not file a motion for reconsideration.

Since the Housing Provider did not pay them a rent refund, the Tenants contacted the paralegal in OAD a second time, and were advised to file a claim in the Small Claims

Branch of the Superior Court. There the Tenants learned from the counsel for the Housing Provider that they lost the case in their tenant petition before OAD.

For the third time, the Tenants contacted the paralegal in OAD who talked to the Administrative Law Judge (ALJ) who wrote the decision, and later the paralegal informed the Tenants that they lost their case. The Tenants allege that they allowed the period for reconsideration [and appeal] to expire solely because of the misinformation from the paralegal. They attached to their notice of appeal a copy of their letter dated October 9, 2002 to the ALJ.

I. THE LAW

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) (2001).

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. See 14 DCMR § 3802.2 (1991); Town Center v. District of Columbia Rental Hous. Comm'n, 496 A.2d 264 (D.C. 1985).

"The time limit for filing a petition for review of agency actions is mandatory and jurisdictional such that once the time prescribed by the rule has passed, the reviewing court is without power to hear the case." Totz v. District of Columbia Rental Hous.

Comm'n, 474 A.2d 827, 829 (D.C. 1984). In Smith v. District of Columbia Rental Hous. Comm'n, 411 A.2d 612, 614 (D.C. 1980), the court vacated the Commission's action that occurred on an appeal that was filed late. See also Bedell v. Clark, TP 24,979 (RHC June 27, 2001) (where the Commission allowed an appeal that was timely filed after the Tenant received it by hand from the Rent Administrator); Young v. Majeed & Independence Property Mgmt., TP 20,352 (RHC Feb. 12, 1988) (where the Commission denied an appeal, because it was filed one day too late, as stated in the decision and order).

II. THE COMMISSION'S ORDER

The Tenants failed to appeal within the time period allowed by law, and the Commission has no discretion to enlarge the time for appeal. See 14 DCMR § 3816.6 (1991), which states, "The Commission for good cause shown may enlarge the time prescribed, either on motion by a party or on its own initiative; Provided, that the Commission does not enlarge the time for filing a notice of appeal." The time periods for reconsideration and appeal were clearly stated on the OAD decision and order at pages 7 and 8. Accordingly, the Commission cannot by law and regulation extend the time for filing an appeal.

The Tenants asserted the reasons for not acting within the statutory time period for appeal, but none of their activities precluded an appeal while they tried to get clarification of the decision and order. The Tenants' submission of a letter dated October 9, 2002 and their explanations and excuses for their failure to timely file an appeal do not explain why more than a year lapsed between March 12, 2002, when the ALJ issued the OAD decision and order and March 14, 2003, when they filed in the Commission their special

request for appeal [notice of appeal]. They allowed the one year time period to expire for relief from the judgment of OAD, pursuant to 14 DCMR § 4017 (1991), and therefore, the Commission cannot remand this appeal for further proceedings before OAD. See Joyce v. Webb, TP 20,720 (RHC Apr. 3, 1997), where the Commission stated the motion for relief from judgment was filed too late. Accordingly, the Tenants' motion for special appeal is denied.

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing ORDER ON SPECIAL REQUEST FOR APPEAL in TP 27,106 was mailed by priority mail, with confirmation of delivery, postage prepaid this 22nd day of May, 2003, to:

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