

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,123

In re: 2515 R Street, S.E., Unit 326

Ward Seven (7)

MARDELLA METHOD
Tenant

v.

BERENS ASSET MANAGEMENT CO., INC.
Housing Provider

DECISION AND ORDER

May 21, 2003

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. 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.

Mardella Method filed the tenant petition on May 21, 2001. Its sole allegation was reduction of services and facilities by the Housing Provider's failure to fix the roof, which caused rain water to leak into petitioner's apartment. The OAD hearing was held on January 30, 2002, and on May 30, 2002, Administrative Law Judge (ALJ) James C. Harmon issued the decision and order. The ALJ found the Tenant proved reduction of services and facilities, and awarded to her a rent refund with interest in the decision and

order. Neither party appealed the decision and order.¹ The Commission examined the decision and order and initiated this review, pursuant to its power in D.C. OFFICIAL CODE § 42-3502.16 (2001). The Commission held its hearing on August 27, 2002.

II. THE ISSUE

Whether the hearing examiner erred when he failed to use the interest rate in effect on the date of the decision, as required by 14 DCMR § 3826.3 (1998), when he calculated the interest on the rent refund.

III. THE LAW

The Commission's rule, 14 DCMR § 3826.3 (1998), provides:

The interest rate imposed on rent refunds or treble that amount, if any, shall be the judgment interest rate used by the Superior Court of the District of Columbia pursuant to D.C. CODE § 28-3302(c), on the date of the decision.

See also Noori v. Whitten, TP 27,045 (RHC Aug. 28, 2002).

IV. THE COMMISSION'S DECISION

The ALJ made the following relevant findings of fact:

6. The Petitioner is entitled to 24-hour emergency, evening and weekend repair service pursuant to her lease agreement dated May 14, 1980.
7. The Petitioner provided insufficient evidence to show that the Respondent C. Delores Tucker failed to provide emergency evening and weekend repairs [sic] services at any time.
8. The following unabated repairs [sic] existed at the Petitioner's unit on November 14, 1999, pursuant to D.C. Housing Deficiency Notice #210999, dated November 14, 1999:
 1. living room ceiling with cracks, loose or peeling paint, and in need of painting;
 2. leak(s) from roof over living room area;
 3. kitchen ceiling with cracks, loose or peeling paint, and in need of painting; and
 4. leak(s) from roof over kitchen ceiling area.

¹ Pursuant to 14 DCMR § 3802.2 (1991), both parties had ten days to appeal and did not. See also OAD Decision at 13. Therefore, all issues raised by both parties at the Commission's hearing are denied as untimely raised.

9. The housing code violations listed in Housing Deficiency Notice #210999 were abated on or about November 27, 1999.
10. The Petitioner complained that on April 5, 1998, that she had eight (8) leaks on her living room ceiling, and that repairs were not made until June 3 or 13, 1998. This water leakage from the Petitioner's living room ceiling occurred prior to May 21, 1998, the end of the three-year period covering TP 27,123.
11. The Respondent C. Delores Tucker had knowledge of water leakage from the living room ceiling in the Petitioner's unit, by and through her agent and property manager, Agnes Gaskins, and failed to promptly restore the ceiling or proportionally reduce the Petitioner's rent for the following periods:
 1. Jan. 23, 1999 through May 23, 1999 (4 months); and
 2. March 15, 2001 through June 15, 2001 (3 months).
12. The water leakage from the living room ceiling caused water damage to the Petitioner's carpet and living room chair; caused mildew and left an unpleasant odor in her unit.
13. The Respondent C. Delores Tucker was notified of water leakage from the living room ceiling in the Petitioner's unit and made repairs, i.e., patched and painted within one (1) day, during the following period:
 1. November 26, 1999 – November 27, 1999; and
 3. January 25, 2000 – January 26, 2000.
14. Both the rent ceiling and monthly rent for Petitioner's unit, between January 1999 and May 21, 2001, the date of the hearing, were Five Hundred Twenty Five Dollars (\$525.00).
15. The value of the unabated water leakage from the living room ceiling was Two Hundred Dollars (\$200.00).
16. The Petitioner provided no evidence that she notified the Respondent C. Delores Tucker, by and through her agent and property manager, Agnes Gaskins, of intermittent water leakage from her living room and kitchen ceilings for the following periods:
 1. June 16, 1998 through January 22, 1999;
 2. June 1999 through November 25, 1999;
 4. November 28, 1999 through January 24, 2000; and
 5. January 27, 2000 through March 14, 2001.

17. The Petitioner is entitled to a refund of her monthly rent as a result of the unabated living room ceiling water leakage listed in Findings [sic] of Fact #11.

18. The reduced rent ceiling for Petitioner's unit as a result of the \$200.00 value assigned to the unabated living room ceiling water leakage problem listed in Findings [sic] of Fact # 11 is \$325.00.

OAD Decision at 3-5.

The ALJ concluded:

After a careful evaluation of the evidence and findings [sic] of fact, the Examiner concludes, as a matter of law:


1. That the Respondent C. Delores Tucker substantially reduced the Petitioner's repair service by failing to timely and promptly restore the unabated living room ceiling water leakage, as set forth in Findings [sic] of Fact #11, without proportionally reducing the Petitioner's rent, in violation of D.C. Code Section 42-3502.11 (2001) and 14 DCMR 4211.6.
2. That the Respondent C. Delores Tucker acted knowingly and willfully when she substantially reduced the Petitioner's repair service by failing to timely and promptly restore the unabated living room ceiling water leakage.
3. The Petitioner is entitled to a rent refund, in the amount of One Thousand Four Hundred Forty Three Dollars and Eighty Four Cents (\$1,443.84), which includes interest, for the Respondent's substantial reduction in her repair service by failing to abate the water leakage from the living room ceiling, listed in Findings [sic] of Fact #11 and referenced in Conclusions of Law #1, pursuant to D.C. Code 42-3509.01(a) (2001).
4. The Petitioner failed to carry her burden of proof, under 14 DCMR 4003, for all other allegations.

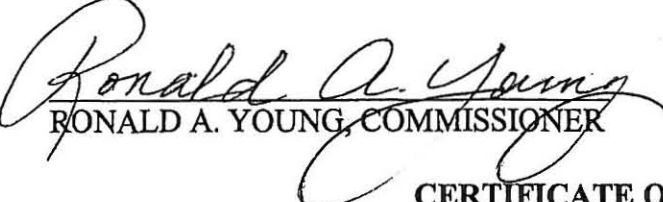
OAD Decision at 12.

In the decision and order, the ALJ awarded interest rates ranging from 3% to 5%. He stated, "[t]he interest calculated takes into consideration the interest rates that were in effect at the Superior Court of the District of Columbia from the period of January 1999 to May 2002." OAD Decision at 11, n.1. This quoted statement is contrary to the

Commission's rule, 14 DCMR § 3826.3 (1998), that the interest rate on rent refunds are calculated by using the rate of the District of Columbia Superior Court in effect on the date of the decision. Accordingly, the ALJ is reversed on the rates used to calculate interest, and affirmed on all other parts of the decision and order. This appeal is remanded to OAD for recalculation of the interest on the rent refund in accordance with 14 DCMR § 3826.3 (1998).

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON


RONALD A. YOUNG, COMMISSIONER

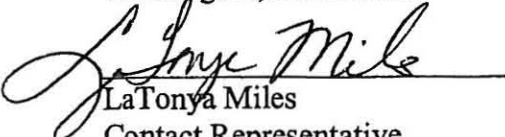
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in TP 27,123 was mailed by priority mail, with confirmation of delivery, postage prepaid this 31st day of May, 2003, to:

Mardella S. Method
2515 R Street, S.E.
Unit 326
Washington, D.C. 20020

C. Delores Tucker
C/o Agnes Gaskins
2515 R Street, S.E.
Washington, D.C. 20020

Agnes Gaskins
Managing Agent
2515 R Street, S.E.
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LaTonya Miles
Contact Representative