DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,188,

In re: 706 Brandywine Street, S.E., Unit 201

Ward Eight (8)

MARY A. VINCENTE
Housing Provider/Appellant

v.

DONNA HINTON
Tenant/Appellee

ORDER ON MOTION FOR STAY

May 27, 2004

BANKS, CHAIRPERSON. This case is on appeal to the Rental Housing Commission from a decision and order issued by the Rent Administrator, based on a petition filed in the Rental Accommodations and Conversion Division (RACD). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, 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

On April 12, 2004, Administrative Law Judge Henry McCoy, issued the decision and order in TP 27,188. On April 21, 2004, Mary A. Vincente, Housing Provider, filed a notice of appeal, and a motion to stay the decision and order. No opposition was filed to the motion.

The Commission denies the motion for stay for the following reasons. Motions for stay are governed by the Commission's regulations, 14 DCMR §§ 3802.10 & 3802.11 (1991).[1]

The court interpreted these regulations in Hanson v. District of Columbia Rental Hous. Comm'n, 584 A.2d 592, 595 (D.C. 1991). The court stated:

> [T]he Commission action was not 'final' and could not be enforced in the trial court until after judicial review of the agency's action was completed or the appeal period has expired. (citation omitted). If Commission actions cannot be judicially enforced, then it would seem to follow logically that RACD decisions of the hearing examiner also cannot be enforced until appellate review has been exhausted. (citation omitted). If the decisions of the hearing examiner cannot be enforced until after judicial review, then there is no need for rules requiring a motion to stay since decisions of the examiner are, in effect, automatically stayed. Since the regulations were inconsistent with the doctrine of primary jurisdiction, the Commission was not bound to follow them. (citation omitted.) (emphasis added.)

Cited in Smith v. Christian, TP 27,661 (RHC Dec. 16, 2003); Lamb v. Anari, Inc., TP 27,666 (RHC July 3, 2003); Oxford House-Bellevue v. Asher, TP 27,583 (RHC June 10, 2003), Redman v. Graham, TP 24,681 (RHC Nov. 21, 2002 & Jan. 6, 2003); Lanier Assoc-./Larry Drell v. 1773 Lanier Place, N.W., Tenants' Assoc., TP 27,344 (RHC Nov. 8, 2002); Vicente v. Anderson, TP 27,201 (RHC Sept. 23, 2002); Barnes v. MacDonald, TP 25,070 (RHC Oct. 3, 2001); Dias v. Perry, TP

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[1] 14 DCMR §§ 3802.10-11 (1991) state:

> Any party appealing a decision of the Rent Administrator which orders the payment of money may stay the enforcement of such decision by establishing an escrow account or purchasing a supersedeas bond which complies with the requirements of § 3806 within five (5) days of filing the notice of appeal.
>
> The payment of money described in §3802.10 shall include the award of rent increases to a housing provider. Establishment of an escrow account or the purchase of a supersedeas bond pursuant to § 3802.10 shall be based on at least six (6) months of the rent increase per party appealing; Provided, that the escrow may be paid in monthly deposits during the pendency of the appeal and the appellee shall be notified of the deposits.

24,379 (RHC June 17, 1999); Savoy Trust v. Clark, TP 11,784 (RHC Apr.23, 1987).

Therefore, the motion to stay the decision and order is DENIED.

SO ORDERED.

RUTH R. BANKS, CHAIRPERSON

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing ORDER ON MOTION TO STAY DECISION AND ORDER in TP 27,188 was mailed by priority mail, with confirmation of delivery, postage prepaid this 26th day of May, 2004, to:

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