DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,239

In re: 4402 First Place, N.E., Unit 13

Ward Five (5)

THOMAS JOHN
Housing Provider/Appellant

v.

ELAINE RICKS CAMP[1]
Tenant/Appellee

DECISION AND ORDER

July 29, 2003

LONG, COMMISSIONER. This case is on appeal from the Department of Consumer and Regulatory Affairs (DCRA), Office of Adjudication (OAD), to the Rental Housing Commission (Commission). 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, 14 DCMR §§ 3800-4399 (1991), govern the proceedings.

I. PROCEDURAL HISTORY

Elaine Camp filed Tenant Petition (TP) 27,239 with the Rental Accommodations and Conversion Division (RACD) on July 31, 2001. In the petition, the tenant alleged

[1] When the tenant executed the lease in August 2000, her name was Elaine Ricks. However, when she filed the tenant petition on July 31, 2001, she used her married name, which is Elaine Camp. In Finding of Fact 2, the ALJ identified the tenant as Elaine Ricks Camp. However, the ALJ reversed the tenant's married name and maiden in the caption of the decision and order and listed the tenant's name as Elaine Camp Ricks. During the Commission's hearing, Mrs. Camp asked the Commission to correct the error in the caption of the case. In accordance with 14 DCMR § 3809.3 (1991), the Commission corrects the error in the caption. However, the Commission cited the OAD decisions using Ricks v. John, because the decision and orders issued by OAD bear that caption.

that the housing provider, Thomas John, increased the rent in less than180 days; filed an improper rent ceiling with the RACD; increased the rent while the unit was not in substantial compliance with the housing regulations; permanently eliminated and substantially reduced services and facilities provided in connection with the rental unit; and directed retaliatory action against the tenant in violation of § 502 of the Act.

The Office of Adjudication mailed the hearing notices to the parties on December 4, 2001. In response to the notice, the housing provider filed a letter with the RACD. In the letter, the housing provider stated that he would not appear at the hearing because he felt threatened by the tenant and her husband, and he filed a criminal complaint against them. In addition, the housing provider stated that his attorney advised him not to appear at the hearing.

Administrative Law Judge (ALJ) Rohulamin Quander convened the scheduled hearing on January 28, 2002. The tenant appeared, pro se, with several witnesses. However, the housing provider failed to appear. The ALJ discussed the housing provider's letter before he began the hearing. The ALJ noted that the housing provider did not provide an attorney's name, and he did not file any documents in support of his assertion that he filed a criminal complaint against the tenant and her husband. As a result, the ALJ held the hearing in the housing provider's absence and received oral and documentary evidence from the tenant and her witnesses. The tenant called several witnesses and entered twenty exhibits into the record, including two housing deficiency notices and seventy-one photographs, which the ALJ described as photographs of twenty unabated repairs and a dead rat.

After considering the tenant's evidence, the ALJ issued the decision and order on June 10, 2002. The ALJ found that the housing provider substantially reduced the tenant's services and facilities, attempted to increase the tenant's rent while substantial housing code violations existed, directed retaliatory action against the tenant, and acted in bad faith. The ALJ awarded treble damages and interest in the amount of $19,086.15. In addition, the ALJ imposed fines, totaling $10,750.00 and ordered a rollback of the tenant's rent. After receiving the ALJ's decision, the housing provider filed a motion for reconsideration, which the ALJ denied. Thereafter, the housing provider appealed the ALJ's decision to the Commission.

On September 4, 2002, the Commission held the appellate hearing. The tenant appeared pro se. The housing provider appeared through Gary Wright, Esquire, who first entered his appearance at the Commission's hearing.

II. ISSUES ON APPEAL

The housing provider, Thomas John, filed the notice of appeal, pro se. In the appeal, the housing provider stated the following:

> The above referenced case is respectfully appealed to you for the following reasons:
>
> 1. The hearing examiner refused to reconsider the case.
> 2. A default judgment was entered in the case.
> 3. The hearing examiner's decision and order is wrong, non-factual, and arbitrary.
> 4. The hearing examiner refused to admit and to examine relevant records to be produced by the [R]espondent.
> 5. Most of the decisions are biased toward [sic] the landlord, without considering the documents submitted when a review was requested.

Notice of Appeal at 1. The housing provider did not file a brief in support of the notice of appeal.

III. DISCUSSION

A. Whether the ALJ refused to reconsider the case.

The ALJ issued the decision and order in this matter on June 10, 2003. In accordance with 14 DCMR § 4013.1 (1991), the housing provider filed a timely motion for reconsideration on June 20, 2003. The housing provider attached several documents to the motion for reconsideration. In accordance with § 4013.2, the ALJ considered the issues that the housing provider raised in the motion for reconsideration.

In the order on reconsideration, the ALJ noted that the housing provider, who elected not to attend the hearing, used the motion for reconsideration to raise new issues and re-raise issues that were decided during the hearing. The ALJ rejected the housing provider's claim that several errors were committed during the original proceeding, found that the issues raised in the motion for reconsideration were without merit, and denied the motion for reconsideration. See Ricks v. John, TP 27,239 (OAD June 25, 2003).

The record revealed that the ALJ considered, discussed, and rejected each issue raised in the motion for reconsideration in accordance with 14 DCMR § 4013.2 (1991). See Ricks v. John, TP 27239 (OAD June 25, 2003). As a result, there is no record evidence to support the housing provider's claim that the ALJ refused to reconsider the case. Accordingly, the Commission denies Issue A.

B. Whether a default judgment was entered in the case.

The housing provider is correct in his assessment that the ALJ entered a default judgment. However, the housing provider has not alleged an error in the entry of the

default judgment. See 14 DCMR § 3802.5 (1991) (requiring the appealing party to provide a clear and concise statement of the alleged error).

The record reflects that the housing provider received notice of the hearing. In response to the hearing notice, the housing provider sent a letter advising the agency that he would not attend the hearing because he feared the tenant and her husband. The housing provider stated that he filed a criminal complaint against the tenant and her husband, and his attorney advised him not to attend the hearing.

When the ALJ convened the hearing, the housing provider did not appear. The ALJ discussed the housing provider's letter and noted that the housing provider failed to document his claim that he filed a criminal complainant against the tenant and her husband. In addition, the ALJ noted that the housing provider did not name the attorney who advised him not to appear, and he noted that no attorney entered an appearance for the housing provider. Consequently, the ALJ held the hearing, received evidence from the tenant, and entered a judgment against the housing provider. The ALJ found that the unsubstantiated reasons provided in the letter did not constitute good cause to continue the hearing. The ALJ's decision to hold the hearing in the housing provider's absence comports with the Commission's decision in Wayne Gardens Tenant Assoc. v. H & M Enters., TP 11,845 (RHC Sept. 27, 1985), where the Commission held that a party must be prepared to go forward unless the agency has affirmatively acted upon a request for a continuance.

Since the housing provider failed to appear at the hearing, the ALJ entered a default judgment. In the notice of appeal, the housing provider declared there was a default judgment; however, the housing provider did not allege a lack of notice or any

other error in the entry of the default judgment. Since the housing provider has not alleged an error with respect to the entry of the default judgment, the Commission does not have an error before it to review. McKinney v. King, TP 27,264 (RHC July 24, 2002); Tenants of 2480 16th St., N.W. v. Dorchester Hous. Ass'n., CI 20,739 & CI 20,741(RHC Jan. 14, 2000) (denying review because the appealing party failed to provide a clear statement of the alleged error as required by the Commission's regulations). Accordingly, the Commission denies this issue.

C. Whether the ALJ's decision and order is wrong, non- factual, and arbitrary.

The housing provider, who filed the notice of appeal pro se, simply alleged that the decision was wrong, non-factual, and arbitrary. The Commission's review is limited to the clear and concise statements of the alleged errors in the ALJ's decision. See 14 DCMR §§ 3802.5 & 3807.4 (1991). The Commission has repeatedly held that a blanket statement that the decision is wrong, non-factual, and arbitrary is too vague for the Commission to review. The Vista Edgewood Terrace v. Rascoe, TP 24,858 (RHC Oct. 13, 2000); Pinnacle Mgmt. Co. v. Marsh, TP 24,827 (RHC Sept. 7, 2000); Pierre-Smith v. Askin, TP 24,574 (RHC Feb. 29, 2000). Moreover, the opposing party does not receive notice or an opportunity to respond to the issues that are on appeal, when a party fails to identify the specific errors.

Attorney Gary Wright entered his appearance for the housing provider on the day of the hearing. During the hearing, Attorney Wright argued several issues that the housing provider did not identify in the notice of appeal. When the Commission asked if these issues were raised in the notice of appeal, Attorney Wright indicated that the housing provider's statement that the decision was wrong, non-factual, or arbitrary

"opened the door," and permitted him to raise issues that his client did not identify in the notice of appeal.

Since the time period for filing an appeal is jurisdictional, the Commission may not extend the appeal period or consider issues that are raised after the time for filing the appeal has ended. Sydnor v. Johnson, TP 26,123 (RHC Nov. 1, 2002); Tenants of 2330 and 2330 Good Hope Rd., S.E. v. Marbury Plaza, L.L.C., CIs 20,753 & 20,754 (RHC Mar. 14, 2002); Lupica v. Balsham, HP 20,071 (RHC Feb. 12, 1988); see also 14 DCMR § 3816.6 (1991). Consequently, the Commission may not consider issues that the housing provider's attorney raised for the first time during the Commission's hearing. The statement that the decision was wrong, non-factual, or arbitrary did not place any issues before the Commission, and the statement did not "open the door" for counsel to address issues, which his client did not include in the notice of appeal. Moreover, the housing provider does not have standing to challenge the merits of the ALJ's decision, because he did not appear at the hearing. See Turner v. Ellison, TP 21,160 (RHC Mar. 22, 1990). Accordingly, the Commission denies this issue, because it is too vague to review.

D. The ALJ refused to admit and to examine relevant records to be produced by the housing provider.

E. Most of the decisions are biased toward the landlord, without considering the documents submitted when a review was requested.

The DCAPA permits parties to present oral and documentary evidence during a contested hearing. See D.C. OFFICIAL CODE § 2-509(b) (2001). The housing provider, who failed to attend the hearing, did not introduce any evidence during the hearing. After the ALJ issued the decision and order, the housing provider filed a motion for

reconsideration and attached a copy of a lease, a notice of increase of general applicability, a notice to quit, and several letters.

In accordance with 14 DCMR § 4013 (1991), the ALJ considered the issues and documents that the housing provider raised in the motion for reconsideration. In the order denying the motion for reconsideration, the ALJ stated the following: "The ALJ, upon initial review of the arguments raised in the Respondent's letter and attached documents, and now considering the attempt to re-raise certain of the issues in the Motion which were already decided as a result of the hearing, plus the raising of several additional issues in the herein Motion for Reconsideration that were not part of the original case, concludes that the issues raised by the Petitioner do not warrant additional review." Ricks v. John, TP 27,239 (OAD June 25, 2003) at 2 (emphasis added).

The ALJ's order on reconsideration reflects that the ALJ considered the documents the housing provider attached to the motion for reconsideration. The ALJ did not err when he failed to admit the documents as record evidence, because the housing provider did not offer the documents as evidence during the contested hearing. Accordingly, the Commission denies Issues D and E.

IV. DISCUSSION OF PLAIN ERROR

A. Whether the ALJ calculated interest in accordance with 14 DCMR § 3826 (1998).

The ALJ committed plain error in the interest calculation. The ALJ failed to apply the most recent regulations that govern interest. Interest is calculated by multiplying the number of months the housing provider held the rent overcharge by the judgment interest rate used by the Superior Court of the District of Columbia on the date that the ALJ issued the decision and order. See 14 DCMR § 3826.3 (1998). Instead of

applying § 3826.3, the ALJ relied upon a repealed regulation, § 4217.3, and applied the various interest rates that were in effect on the dates of the overcharges. This was plain error. In accordance with 14 DCMR § 3807.4 (1991), the Commission corrects the plain error. See The Rittenhouse, LLC v. Campbell, TP 25,093 (RHC Dec. 17, 2002).

The judgment interest rate used by the Superior Court on June 10, 2002 was 4%. The Commission corrects the ALJ's plain error and recalculates the interest for the rent overcharges from February 2001 through May 2002, which is the period set by the ALJ. The Commission imposes interest in the amount of $171.00 for the rent overcharges from February 2001 through May 2002. The interest calculation for this period appears in the following chart.

Interest Chart
February 2001 through May 2002

A	B	C	D	E
Amount of Overcharge[2]	Months Held by Housing Provider	Monthly Interest Rate	Interest Factor (BxC)	Interest Due (AxD)
$500.00	16	.003%	.048	$24.00
$500.00	15	.003%	.045	$22.50
$500.00	14	.003%	.042	$21.00
$500.00	13	.003%	.039	$19.50
$500.00	12	.003%	.036	$18.00
$500.00	11	.003%	.033	$16.50
$300.00	10	.003%	.030	$9.00
$300.00	9	.003%	.027	$8.10
$300.00	8	.003%	.024	$7.20
$300.00	7	.003%	.021	$6.30
$300.00	6	.003%	.018	$5.40
$300.00	5	.003%	.015	$4.50
$300.00	4	.003%	.012	$3.60
$300.00	3	.003%	.009	$2.70

[2] In Schauer v. Assalaam, TP 27,084 (RHC Dec. 31, 2002) (quoting 424 Q St. Ltd. P'ship v. Evans, TP 24,597 (RHC July 31, 2000)), the Commission held that the hearing examiner erred when he used the reduced amount of the Superior Court protective order to calculate the rent refund, instead of using the amount of rent that the housing provider charged or demanded. In the instant case, the tenant did not appeal the ALJ's decision. Consequently, the Commission did have an occasion to review the rent refund.

$300.00	2	.003%	.006	$1.80
$300.00	1	.003%	.003	$.90
			Total Interest:	$171.00

IV. CONCLUSION

For the foregoing reasons, the Commission affirms the ALJ's decision and order in TP 27,239. However, the Commission corrected the plain error in the interest calculation.

Accordingly, the housing provider shall refund $18,981.00 to the tenant. The housing provider shall refund $18,981.00 to the tenant and tender $10,750.00 in fines to the agency within thirty days of this decision and order.

SO ORDERED.

RUTH R. BANKS, CHAIRPERSON

RONALD A. YOUNG, COMMISSIONER

JENNIFER M. LONG, COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Decision and Order in TP 27,239 was mailed by priority mail with delivery confirmation, postage prepaid, this 29th day of July 2003 to:

Elaine Camp
4402 1st Place, N.E.
Unit 13
Washington, D.C. 20001

Gary Wright, Esquire
7220 Wisconsin Avenue
Suite 320
Bethesda, MD 20814

LaTonya Miles
Contact Representative