

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 27,264

In re: 1401 Tuckerman Street, N.W., Unit 301

Ward Four (4)

SEBRON J. KING  
Housing Provider/Appellant

v.

WANDA MCKINNEY  
Tenant/Appellee

**DECISION AND ORDER**

June 17, 2005

**LONG, COMMISSIONER.** This case is on appeal from the Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion Division (RACD), 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) and its amendments, govern the proceedings.

**I. PROCEDURAL HISTORY**

Wanda McKinney filed Tenant Petition (TP) 27,264 with the RACD on August 20, 2001. The petition concerned the multi-unit housing accommodation located at 1401 Tuckerman Street, N.W. Sebron King owned the housing accommodation, and Virgil Hood was the property manager. Ms. McKinney began her tenancy in unit 301 on

August 16, 2000. In the petition, the tenant alleged that her rent exceeded the legally calculated rent ceiling.

The agency scheduled the matter for an evidentiary hearing in the Office of Adjudication. Hearing Examiner Rohulamin Quander presided at the hearing on December 10, 2001. The tenant appeared without counsel. James Young appeared as a representative for the housing provider. After considering evidence submitted during the hearing and documents submitted post-hearing, Hearing Examiner Quander determined that the tenant's rent did not exceed the rent ceiling, and he dismissed the petition. Hearing Examiner Quander issued the decision and order on March 11, 2002.

On March 15, 2002, the tenant appealed Hearing Examiner's Quander's decision and order. Following a hearing and review of the appeal issues, the Commission reversed Hearing Examiner Quander's decision and order because he improperly based his ruling upon documents that the housing provider filed after the evidentiary hearing. The Commission held that the rent exceeded the rent ceiling and remanded the matter to the Rent Administration for findings of fact, conclusions of law, and a calculation of the rent refund and interest. See McKinney v. King, TP 27,264 (RHC July 24, 2002).

On August 1, 2003, Hearing Examiner Keith Anderson issued a proposed decision and order<sup>1</sup> following the Commission's remand. The decision contained the following findings of fact and conclusions of law:

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<sup>1</sup> When the Commission remanded the matter, Hearing Examiner Quander was not employed by the agency. Consequently, the Rent Administrator assigned the matter to Hearing Examiner Anderson. Since Hearing Examiner Anderson did not personally hear the evidence, he issued a proposed decision and order in accordance with D.C. OFFICIAL CODE § 2-509(d) (2001).

## Findings of Fact

1. The subject housing accommodation is located at 1401 Tuckerman Street, N.W., in Ward 4.
2. Wanda McKinney has resided in Unit 301 at the subject property, at all relevant times, and is the Petitioner in this matter. Sebron J. King of Tuckendall, Inc. has managed the subject property at all relevant times and is the Respondent in this matter.
3. Petitioner paid monthly rent in the amount of \$700 for use and occupancy of Unit 301 at all relevant times from August 1, 2000.
4. Petitioner presented a one-year, residential lease effective July 15, 2000, which listed the monthly rent at \$700.00, a rent receipt for August 2001 indicating payment of \$725.00 (including a \$25.00 late fee), and a Certificate of Election of Adjustment of General Applicability, which Respondent filed with RACD on September 24, 1998. The Certificate of Election reflected a rent ceiling of \$543.00 and a rent charged of \$533.00 for Unit 301, effective November 1, 1998.
- 2.<sup>2</sup> Based on RACD records and statements made by RACD staff persons, the lone rent ceiling adjustment form from September 24, 1998, which Petitioner introduced, is the most recent form within the RACD Registration File for 1401 Tuckerman Street, N.W.
3. Through the lease agreement, the September 24, 1998 certificate of election filed with RACD, and her hearing testimony, Petitioner provided evidence that the \$700 monthly rent charged for her tenancy exceeded the \$534 rent ceiling listed for her unit on the September 24, 1998 certificate of election.
4. Respondent did not offer any rent ceiling adjustment forms at the December 10, 2001 OAD hearing.
5. Examiner Quander took "administrative notice" of the rent ceiling forms Respondent did not bring to the OAD hearing and gave him twenty-four hours after the hearing to submit the forms to the record.
6. Examiner Quander did not attempt to take official notice of information contained in the actual RACD record but sought to take "administrative notice" of Respondent's copies of its RACD records.

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<sup>2</sup> The error in the numbering appears in the hearing examiner's decision and order.

7. Examiner Quander admitted Respondent's copies of its records as post-hearing submissions and relied upon them in his decision and order in violation of the law.
8. The rent increase forms that Respondent submitted post-hearing were stricken from the evidentiary record of the December 10, 2001 OAD hearing by the Commission.
9. Without Respondent's post-hearing submission, the record is devoid of an amended registration form, certificate of election, or any other document that controverts the \$543.00 rent ceiling effective November 1, 1998 established by the September 24, 1998 certificate of election, which was produced by Petitioner, including the June 29, 1999 amended registration form indicating a vacancy increase to \$700 based on a comparable unit.
10. Because the record contains no evidence to the contrary, the legal rent ceiling and legal monthly rent charged was \$534 for Petitioner's unit from the beginning of her tenancy.
11. The \$700 Respondent charged Petitioner for rent each month exceeded the \$534 rent ceiling for Petitioner's unit.
12. Petitioner paid \$157 (\$700 minus \$534) each month in excess of the legal rent ceiling and monthly rent charged for her unit.
13. Petitioner is entitled to a refund in the amount of TWO THOUSAND NINE HUNDRED AND EIGHTY THREE DOLLARS, \$2,983, interest included, for the \$157 rent overcharge she paid each month from August 1, 2000, the beginning of her tenancy, to December 19, 2001, the date of the RACD hearing.
14. Petitioner's monthly rent charged and rent ceiling shall be rolled back to \$543, the legal rent ceiling established for Petitioner's unit at the December 10, 2000 [sic] OAD hearing.
15. Examiner Quander's finding that Respondent's rent charge of \$700.00 did not exceed the legally calculated rent ceiling of \$701.16 for Petitioner's unit is reversed because substantial evidence in the record does not support his finding.

#### Conclusions of Law

1. Examiner Quander did not attempt to take official notice of information contained in the actual RACD record but sought to take "administrative notice" of Respondent's copies of its RACD records, in violation of 14 DCMR 4009.7(b) (1991).

2. Examiner Quander admitted Respondent's copies of its records as post-hearing submissions, failed to allow Petitioner the opportunity to show the contrary, and relied upon them in his decision and order in violation of D.C. Official Code Sect. 2-509(b) (2001); *Carey v. District Unemployment Compensation Bd.*, 304 A.2d 18 (D.C. 1973); and *Harris v. District of Columbia Rental Housing Commission*, 505 A.2d 66 (D.C. 1986). Therefore, Respondent's rent increase forms that Examiner Quander admitted and considered as post-hearing submission are stricken from the record.
3. Pursuant to 14 DCMR 4003 (1991), Petitioner proved by a preponderance of the evidence that 1) both the legal rent ceiling and monthly rent charged was \$534 for her unit at the beginning of her tenancy; 2) Respondent charged her \$700 rent each month for her tenancy; and 3) the \$700 monthly rent charged exceeded the \$534 legal rent ceiling by \$157.
4. Pursuant to 14 DCMR 4003 (1991), because his rent increase forms that were submitted post-hearing were stricken from the record, Respondent failed to carry his burden of proving that the legal rent ceiling was \$701, not \$534, for Petitioner's unit during her tenancy.
5. Respondent failed to establish at the December 10, 2001 OAD hearing that he properly adjusted the rent ceiling from \$534 to \$701 and the monthly rent charged from \$534 to \$700 for Petitioner's unit, at the beginning of her tenancy, pursuant to D.C. Official Code Sect. 42-3502.13 (2001) and 14 DCMR Sect. 4207 (1991).
6. Because Respondent did not establish at the December 10, 2001 hearing that he properly adjusted the rent ceiling from \$534 to \$701 for Petitioner's unit, as set forth in Conclusion of Law #5, the \$700 monthly rent charged exceeded the \$534 legal rent ceiling, in violation of D.C. Official Code Sect. 42-3502.06(a) (2001).
7. Respondent unlawfully charged Petitioner monthly rent \$157 in excess of the legal rent ceiling (\$700 minus \$534) for 17 months, from August 1, 2000, the beginning of the tenancy, to December 10, 2001, the date of the OAD hearing. Petitioner is entitled to a refund of the overcharges in the amount of TWO THOUSAND SIX HUNDRED AND SIXTY NINE DOLLARS, \$2,669, plus interest in the amount of THREE HUNDRED AND FOURTEEN DOLLARS, \$314, for a total refund of TWO THOUSAND NINE HUNDRED AND EIGHTY THREE DOLLARS, \$2983, pursuant to D.C. Official Code Sect. 42-3509.01(a) (2001).
8. Examiner Quander's finding that the \$700 monthly rent charged Petitioner for her tenancy did not exceed the legal rent ceiling for her unit is reversed

pursuant to the Commission's holding in *McKinney v. King*, TP 27,264 (RHC July 24, 2002).

McKinney v. King, TP 27,264 (RACD Aug. 1, 2003) at 8-11.

The housing provider, who was not represented by counsel, appealed the Rent Administrator's decision and order on August 15, 2003. The Commission held the appellate hearing on December 18, 2003.

## II. ISSUES

Virgil Hood, the Manager for Tuckendall, Inc., filed a pleading entitled Objections and [M]otions for Reconsideration of Appeal (Appeal). The pleading, which the Commission will treat as a notice of appeal, contained a series of issues, complaints, and observations. The pleading contained two groups of numbered paragraphs and several narrative paragraphs wherein the housing provider alleged errors, made observations, and expressed dissatisfaction with the agency, the hearing examiner, and the Commission. In addition, the housing provider attached several documents to the pleading.

After reviewing the housing provider's pro se appeal,<sup>3</sup> the Commission extracted the following issues:

- A. The Petitioner failed to file the Tenant petitions with RACD timely, she signed a lease on July 15, 2000 and did not file the petition until August 10, 2001. The matter was heard on December 10, 2001 by Hearing [E]xaminer Rohulamin Quander, who dismissed the case in favor of Tuckendall Inc.
- B. We have abided by all RACD regulations by filing each year, all forms required to make increases in rent by the percentage of the adjustment of general applicability which is allowed under the authority of section

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<sup>3</sup> See Dixon v. Majeed, TP 20,658 (RHC Oct. 4, 1989) (noting the importance of carefully reviewing the pleadings of parties who are not represented by counsel).

206(B) of the [R]ental [H]ousing [A]ct of 1985 which is equal to the percentage of increase in the consumer price index.

- C. Our records show by the Dept. of Consumer and Regulatory Affairs stamp on HRA Form 5 with the date and time stamp each year. (See stamped attachments.) Since the year 2000 when there is a vacancy in the building, we rehab the unit, install new kitchen and bath appliances before re-renting the unit.
- D. On Dec. 10, 2001, when the examiner heard the case, the housing provider Sebron King was in Washington Hospital Center not able to attend the hearing. Sebron King had one of his workers who was familiar with our case against Wanda McKinney, the Petitioner, represent him in Landlord and Tenant court.
- E. Mr. Quander was the Hearing [E]xaminer who heard the case and testimony, he made a decision on what was presented to him. Mr. Keith Anderson, who knew nothing about the case, wrote a decision that was not in compliance with the Rent Stabilization program.
- F. Sec. #206, paragraph (e) states that; a tenant must challenge the new base rent as provided in section 103(2) of this act within 6 months from the date the housing provider files his base rent.
- G. Sec. # 216 (a), the rent administrator shall consider adjustments upon a petition filed by the housing provider or tenant within 120 days after the petition is filed with the [R]ent [A]dministrators [sic]. The time may be extended only by written agreement between the housing provider and tenant of the rental unit.
- H. Sec. # 219 Judicial review; any person or class of persons aggrieved by a decision of the Rental Housing Commission, or by any failure on the part of the Rental Housing Commission or Rent Administrator to act within any time certain mandated by the [A]ct, may seek judicial review of the decision or an order compelling the decision by filing a petition for review in the District of Columbia Court of Appeals.
- I. The result of a default judgement [sic] because the party failed to appear at the hearing.
- J. Contains clear error that is evident on its face and examiner did not consider all of the facts.
- K. Evidence before Hearing Examiner on that Law was applied incorrectly because evidence in the official record (File of RAO office case files on

forms by Rent Administrator which was filed timely and case was not closed by the first examiner.)

- L. During the period from Aug. 1, 2000-Dec. 10, 2001 (17 mos.), the Petitioner paid rent for twelve (12) months.
- M. There are two cases, T.P. 27,604 and T.P. 27,612, a building located at 3467-14<sup>th</sup> St. N.W. These two cases have the examiners giving decisions that are also inconsistent with The Council of the District of Columbia [R]ent Stabilization Program.

Appeal at 1-3.

### III. DISCUSSION

- A. The Petitioner failed to file the tenant petitions with RACD timely, she signed a lease on July 15, 2000 and did not file the petition until August 10, 2001. The matter was heard on December 10, 2001 by Hearing Examiner Rohulamin Quander, who dismissed the case in favor of Tuckendall, Inc.**
- B. Section 206, paragraph (e) states that a tenant must challenge the new base rent as provided in section 103(2) of this Act within 6 months from the date the housing provider files his base rent.**

There is no provision in the Act or the applicable regulations that requires a tenant to file a tenant petition within a specific period of time after the tenant signs the lease, and the tenant did not challenge the base rent.

The provision of the Act, which empowers housing providers and tenants to file petitions, provides the following:

The Rent Administrator shall consider adjustments allowed by §§ 42-3502.10, 42-3502.11, 42-3502.12, 42-3502.13, and 42-3502.14 or a challenge to a § 42-3502.06 adjustment, upon a petition filed by the housing provider or tenant. The petition shall be filed with the Rent Administrator on a form provided by the Rent Administrator containing the information the Rent Administrator or the Rental Housing Commission may require.

D.C. OFFICIAL CODE § 42-3502.16(h) (2001). In addition, 14 DCMR §§ 3901-3902 (1991), outline the procedures for filing petitions. Like the Act, the regulations do not set a specific time period to file the petition.

The housing provider indicated that the tenant did not file a timely petition, because she began the tenancy on July 15, 2000, but she did not file the petition until August 10, 2001. Moreover, the housing provider stated that the hearing examiner issued the decision and order on December 10, 2001. The housing provider did not provide a nexus between the date the tenant signed the lease, the date she filed the petition, and the date the hearing examiner issued the decision and order; and the Commission did not find such a nexus in the Act or regulations.

The Commission notes that the Act contains a limitation period, which provides the following:

A tenant may challenge a rent adjustment implemented under any section of this chapter by filing a petition with the Rent Administrator under § 42-3502.16. No petition may be filed with respect to any rent adjustment, under any section of this chapter, more than 3 years after the effective date of the adjustment, except that a tenant must challenge the new base rent as provided in § 42-3501.03(4) within 6 months from the date the housing provider files his base rent as required by this chapter.

D.C. OFFICIAL CODE § 42-3502.06(e) (2001). This provision of the Act prohibits a tenant from challenging a base rent more than six months after the housing provider files the base rent, and it bars the tenant from making a claim more than three years after the claim arose. However, the Act does not require the tenant to file a petition within a time certain after the tenant signs a lease, and the tenant did not challenge the base rent in the instant petition.

Because neither the Act nor the regulations require a tenant to file a petition within a time certain after beginning her tenancy, and the case did not involve a challenge to the base rent, the Commission denies Issues A and B.

- C. We have abided by all RACD regulations by filing each year, all forms required to make increases in rent by the percentage of the adjustment of general applicability which is allowed under the authority of section 206(b) of the Rental Housing Act of 1985 which is equal to the percentage of increase in the consumer price index.**
- D. Evidence before hearing examiner on that law was applied incorrectly because evidence in the official record (File of RAO office case files on forms by Rent Administrator which was filed timely and case was not closed by the first examiner.)**

When the housing provider filed the instant appeal, he attached several documents and raised several issues that the Commission resolved in the initial appeal of this matter. The law of the case doctrine prohibits the Commission from reopening issues that the Commission resolved in an earlier appeal. Lynn v. Lynn, 617 A.2d 963 (D.C. 1992) cited in Kamerow v. Baccous, TPs 24,470 & 24,471 (RHC Sept. 17, 2004); Dias v. Perry, TP 24,379 (RHC July 30, 2004).

When the Commission decided the initial appeal in this matter, the Commission ruled that the hearing examiner erred because he relied upon post-hearing submissions when he issued the decision and order. Citing Harris v. District of Columbia Rental Hous. Comm'n, 505 A.2d 66 (D.C. 1986), the Commission reversed the hearing examiner's finding that the tenant's rent did not exceed the rent ceiling, because the hearing examiner based his finding on registration statements and other documents that the housing provider submitted after the hearing. In its decision and order the Commission held:

For the foregoing reasons, the Commission reverses the hearing examiner's finding that the rent being charged did not exceed the legally calculated rent ceiling for the tenant's unit. Substantial evidence in the existing record shows that the rent charged exceeded the legally calculated rent ceiling filed with RACD. Both parties testified that the tenant's rent was \$700.00 from the inception of her tenancy. The tenant produced Tenant's Exhibit 3, a September 24, 1998 Certificate of Election of Adjustment of General Applicability, which set the rent ceiling at \$543.00 effective November 1, 1998. Since the housing provider's rent ceiling adjustment forms are stricken from the record because they were submitted post-hearing, Tenant's Exhibit 3, is unrebutted. Therefore, the tenant supported her claim that the rent exceeded the legal rent ceiling by a preponderance of the evidence. The burden of proof then shifted to the housing provider, who failed to offer documentary proof to rebut the tenant's claim *during* the OAD hearing.

Consequently, because the housing provider charged the tenant \$700.00 in rent from the beginning of the tenancy, the housing provider is liable for the amount by which the rent exceeded the \$543.00 rent ceiling and a roll-back of the rent to \$543.00, which is the maximum allowable rent ceiling.

The case is remanded to the examiner to make factual findings and conclusions of law in accordance with this decision and order, to calculate the rent refund for the period of the violation, and to impose interest through the date of the examiner's remand decision in accordance with D.C. OFFICIAL CODE § 42-3509.01 of the Act and 14 DCMR § 3826 (1998).

McKinney v. King, TP 27,264 (RHC July 24, 2002) at 11-12.

In accordance with the Commission's ruling, Hearing Examiner Keith Anderson found that the housing provider unlawfully charged the tenant rent, which was \$157.00 in excess of the rent ceiling. The hearing examiner found that the legal rent ceiling was \$543.00. However, the tenant's monthly rent was \$700.00 from the beginning of the tenancy until the date of the OAD hearing, which was seventeen months. The hearing examiner awarded the tenant a refund in the amount of \$2669.00 ( $\$700 \text{ (rent)} - \$543.00 \text{ (rent ceiling)} \times 17 \text{ (period of overcharge)} = \$2669.00$ ). The hearing examiner also awarded interest in the amount of \$314.00, for a total refund of \$2983.00.

In the face of the Commission's initial ruling and Hearing Examiner Anderson's ruling following the Commission's remand, the housing provider filed several certificates of election that were not submitted during the evidentiary hearing. The housing provider argues that he has abided by all RACD regulations by filing, each year, all forms required to increase the rent by the percentage of the adjustment of general applicability. In addition, the housing provider argues that the hearing examiner incorrectly applied the law. He states that he did not charge rent in excess of the rent ceiling, because evidence in the official record, which he described as the "File of RAO," contains forms by the Rent Administrator which were filed timely, and the case was not closed by the first examiner.

The Commission previously ruled that Hearing Examiner Quander improperly relied upon documents submitted post-hearing. The Commission struck those documents from the record. In the absence of the post-hearing submissions, the substantial record evidence revealed that the housing provider charged the tenant rent, which exceeded the established rent ceiling.<sup>4</sup> The law of the case doctrine prohibits the Commission from reversing its prior ruling. Accordingly, the Commission denies Issues C and D.

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<sup>4</sup> In the initial decision and order in this matter, the Commission wrote the following:

As part of his case, the housing provider's "aide," Mr. Young, attempted to rebut the tenant's claim of a lower rent ceiling with testimony that the housing provider had filed the required rent ceiling adjustment forms to increase the rent ceiling. However, Mr. Young was not able to produce the actual documents to support his testimony. He then explained to the examiner that Virgil Hood, the Vice President of Tuckendall, Inc., the owner corporation, was supposed to bring the necessary documents to the hearing that morning. Mr. Young also expressed his mistaken belief that since the RACD office was in the same building, the RACD should have provided the hearing examiner with the housing provider's registration file so that the examiner would have been able to refer to the missing documents during the hearing.

McKinney v. King, TP 27,264 (RHC July 24, 2002) at 6.

**E. Our records show by the Department of Consumer and Regulatory Affairs stamp on HRA Form 5 with the date and time stamp each year. (See stamped attachments.) Since the year 2000 when there is a vacancy in the building, we rehab the unit, install new kitchen and bath appliances before re-renting the unit.**

In Issue E of the instant appeal, the housing provider referenced and resubmitted post-hearing submissions, which were previously rejected; and the housing provider raised an issue concerning vacancies, which the Commission resolved when it reviewed appeal Issues F and G in the initial decision. In McKinney v. King, TP 27,264 (RHC July 24, 2002), the Commission held the following:

Issues F and G relate to the legality of a vacancy-based rent ceiling adjustment, which the housing provider allegedly took in June 1999 pursuant to Section 213 of the Act. The housing provider sought to prove the legitimacy of charging the tenant \$700.00 for rent by submitting several rent ceiling adjustment forms post-hearing, including a June 29, 1999 amended registration form indicating a vacancy increase based on a comparable unit. However, as discussed supra, the housing provider did not introduce any of the documentary evidence on which he relies until after the hearing. Consequently, under Harris, the hearing examiner improperly admitted the documents into the record.

The Commission's holding that the hearing examiner erred in admitting post-hearing evidence into the record disposes of any need to inquire into rent adjustment forms that, as a matter of law, cannot be recognized as part of the record. The Commission, like the hearing examiner, is strictly bound to base its decisions only on the record evidence. See D.C. OFFICIAL CODE § 2-509(c) (2001). Therefore, Issues F and G are dismissed as moot.

Similarly, the Commission denies Issue E. The Commission cannot base its decision on documents that were submitted with the instant appeal, and the law of the case doctrine prohibits the Commission from revisiting the previous ruling concerning the vacancy increases. Therefore, the Commission denies Issue E.

**F. Mr. Quander was the hearing examiner who heard the case and testimony, he made a decision on what was presented to him. Mr. Keith Anderson, who knew nothing about the case, wrote a decision that was not in compliance with the Rent Stabilization program.**

The housing provider is correct in his assertion that Hearing Examiner Quander presided at the evidentiary hearing and issued the Rent Administrator's initial decision and order based on "what was presented to him." Hearing Examiner Quander erred, however, when he based his decision on post-hearing submissions. As a result, the Commission reversed Hearing Examiner Quander's decision and remanded the matter to the Rent Administrator.

When the Commission remanded the matter, Hearing Examiner Quander was not employed by the agency. Consequently, the Rent Administrator assigned the matter to Hearing Examiner Anderson. Since Hearing Examiner Anderson did not personally hear the evidence, he issued a proposed decision and order in accordance with D.C. OFFICIAL CODE § 2-509(d) (2001), which provides:

Whenever in a contested case a majority of those who are to render the final order or decision did not personally hear the evidence, no order or decision adverse to a party to the case (other than the Mayor or an agency) shall be made until a proposed order or decision, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of those who are to render the order or decision, who, in such case, shall personally consider such portions of the exclusive record, as provided in subsection (c) of this section, as may be designated by any party.

The housing provider argues that Hearing Examiner Anderson's proposed decision and order was not in compliance with the Rent Stabilization Program. However, the housing provider failed to allege a specific error or state why the decision was not in compliance with the law.

The Commission's regulation, 14 DCMR § 3802.5(b) (1991), requires the parties to submit a clear and concise statement of the alleged errors in the Rent Administrator's decision and order. The Commission has repeatedly held that it cannot review issues that do not contain a clear and concise statement of the specific errors in the Rent Administrator's decision. Cascade Park Apartments v. Walker, TP 26,197 (RHC Jan. 14, 2005); Parreco v. Akassy, TP 27,408 (RHC Dec. 8, 2003); Voltz v. Pinnacle Mgmt. Co., TP 25,092 (RHC Sept. 28, 2001); Hagner Mgmt. Corp. v. Brookens, TP 3788 (Feb. 4, 1999). Since the housing provider failed to allege a specific error in the proposed decision, the Commission denies Issue F.

**G. Section 216(a): the Rent Administrator shall consider adjustments upon a petition filed by the housing provider or tenant within 120 days after the petition is filed with the Rent Administrator. The time may be extended only by written agreement between the housing provider and tenant of the rental unit.**

The housing provider is correct in his assertion that § 216, D.C. OFFICIAL CODE § 42-3502.16(a) (2001), provides that the Rent Administrator shall issue a decision and an order within 120 days after the petition is filed with the Rent Administrator. However, the hearing examiner's failure to meet the prescribed time period is not reversible error, because the statutory time period for rendering a decision and order is not mandatory; it is directory. Washington Hosp. Ctr. v. District of Columbia Dep't of Employment Servs., 712 A.2d 1018 (D.C. 1998).

A directory statutory time period is a "provision in a statute, rule of procedure or the like, which is a mere direction or instruction of no obligatory force, and involving no invalidating consequence for its disregard, as opposed to an imperative or mandatory provision, which must be followed." BLACK'S LAW DICTIONARY 414 (5<sup>th</sup> ed. 1979). In

Washington Hosp. Center, the court held that specific statutory time periods for agency action are directory. The court cited several cases where it held that specific statutory time periods were not mandatory requirements. Citing M.B.E., Inc. v. Minority Bus. Opportunity Comm'n, 485 A.2d 152, 155 n.1. (D.C. 1984), the court held that a “regulation stating [that the] Commission's final decision ‘must be issued in writing within ninety (90) days’ [was] interpreted as ‘directory, rather than mandatory or jurisdictional’.” Washington Hosp. Ctr., 712 A.2d at 1020. The court held that the provisions were directory, even when the word “shall” appeared in the statute.

Similarly, the Commission has repeatedly held that the 120 day time period in § 42-3502.16(a) is directory, rather than mandatory or jurisdictional. See Zucker v. NWJ Mgmt., TP 27,690 (RHC May 16, 2005); Lyons v. Pickrum, TP 27,616 (RHC Feb. 1, 2005); Greene v. Urquilla, TP 27, 604 (RHC Jan. 14, 2005) (rejecting a challenge to the validity of a decision and order issued more than 120 days after the tenant filed the petition). Therefore, the Rent Administrator did not err when the hearing examiner issued the decision and order more than 120 days after the tenant filed the petition. The Commission denies Issue G.

- H. On December 10, 2001, when the examiner heard the case, the housing provider Sebron King was in Washington Hospital Center not able to attend the hearing. Sebron King had one of his workers who was familiar with our case against Wanda McKinney, the Petitioner, represent him in Landlord and Tenant court [sic].**
- I. The result of a default judgment because the party failed to appear at the hearing.**
- J. Contains clear error that is evident on its face and the hearing examiner did not consider all of the facts.**

In Issues H, I, and J, the housing provider has not provided a clear and concise statement of the alleged errors in the Rent Administrator's decision. See 14 DCMR § 3802.5 (1991). Moreover, this matter did not result in a default judgment, as stated in Issue I, because Mr. Young appeared on behalf of the housing provider. When Mr. Young appeared, he explained that the owner of the housing accommodation, Sebron King, was in the hospital. However, Mr. Young stated that he was prepared to represent the housing provider. Mr. Young also stated that Mr. Hood was scheduled to appear; however, he could not offer an explanation for his absence.

In Issue J, the housing provider asserted that the decision contains clear error that is evident on its face and the hearing examiner did not consider all of the facts. However, the housing provider did not identify the errors that are evident on the face of the decision, and he did not provide a statement of the facts that the hearing examiner failed to consider. In the absence of a clear and concise statement of error in the Rent Administrator's decision, the Commission denies Issues H, I and J.<sup>5</sup>

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<sup>5</sup> In Issues I and J, the housing provider recited the grounds for filing a motion for reconsideration pursuant to 14 DCMR § 4013.1 (1991), which provides:

Any party served with a final decision and order may file a motion for reconsideration with the hearing examiner within (10) days of receipt of that decision, only in the following circumstances:

- (a) If there has been a default judgment because of the non-appearance of the party;
- (b) If the decision or order contains typographical, numerical, or technical errors;
- (c) If the decision or order contains clear error that is evident on its face; or
- (d) If the existence of newly discovered evidence, which could not have been discovered prior to the hearing date, has been discovered.

When the housing provider filed the appeal, he improperly recited subsections a, b, and, c as issues in the notice of appeal.

- K. Section 219 Judicial Review: any person or class of persons aggrieved by a decision of the Rental Housing Commission, or by any failure on the part of the Rental Housing Commission or Rent Administrator to act within any time certain mandated by the Act, may seek judicial review of the decision or an order compelling the decision by filing a petition for review in the District of Columbia Court of Appeals.**
- L. During the period from August 1, 2000 through December 10, 2001 (17 months), the Petitioner paid rent for twelve (12) months.**
- M. There are two cases, TP 27,604 and TP 27,612, a building located at 3467-14<sup>th</sup> St. N.W. These two cases have the examiners giving decisions that are also inconsistent with the Council of the District of Columbia Rent Stabilization Program.**

The final three appeal issues are mere statements. The housing provider has not alleged error or explained how Issues K, L, and M affect the current appeal.

Accordingly, the Commission dismisses Issues K, L, and M.

#### **IV. CONCLUSION**

For the foregoing reasons, the Commission affirms the Rent Administrator's August 1, 2003 decision and order.

SO ORDERED.

  
RONALD A. YOUNG, COMMISSIONER

  
JENNIFER M. LONG, COMMISSIONER

#### MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (1991), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (1991), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), “[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals.” Petitions for review of the Commission’s decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

D.C. Court of Appeals  
Office of the Clerk  
500 Indiana Avenue, N.W.  
6th Floor  
Washington, D.C. 20001  
(202) 879-2700

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Decision and Order in TP 27,264 was mailed by priority mail with delivery confirmation, postage prepaid, this 17th day of June 2005 to:

Virgil Hood  
Manager  
Tuckendall, Inc.  
1401 Tuckerman Street, N.W.  
Washington, D.C. 20011

Wanda McKinney  
7710 Eastern Avenue, N.W.  
Washington, D.C. 20012



LaTonya Miles  
Contact Representative  
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