DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,461

In re: 304 Galveston Street, S.W., Unit 101

Ward Eight (8)

DUANE BRIAN MAGBY
Tenant

v.

WINGATE APARTMENTS
Housing Provider

DECISION AND ORDER

June 13, 2003

PER CURIAM. This case is before the District of Columbia Rental Housing Commission (Commission) pursuant to the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001). The Act, 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. In accordance with § 42-3502.16(h), the Commission initiated review of the Rent Administrator's decision and order, issued by Hearing Examiner Carl Bradford on August 14, 2002.

I. PROCEDURAL HISTORY

Duane Brian Magby filed Tenant Petition (TP) 27,461 with the Rental Accommodations and Conversion Division (RACD) on March 11, 2002. In the petition, the tenant alleged that the housing provider, Wingate Apartments, failed to provide services and/or facilities as set forth in a Voluntary Agreement filed with and approved by the Rent Administrator under Section 215 of the Act.

On June 18, 2002, the housing provider filed an action for possession in the Superior Court of the District of Columbia, Landlord and Tenant Branch. A hearing was scheduled for July 10, 2002, and the tenant appeared without counsel. The hearing was continued by consent of all parties to July 25, 2002 for ascertainment of counsel. Although the tenant maintains that he was present on the July 25, 2002, a default judgment was entered against him on that date. The court did not receive testimony or evidence concerning the matter. The case was dismissed because the tenant was absent when the case was called.

The Office of Adjudication (OAD) scheduled TP 27,461 for an evidentiary hearing on August 12, 2002. On that date, the tenant appeared pro se, and the housing provider appeared represented by counsel, Stephen O. Hessler. As a preliminary matter, the housing provider made an oral motion to dismiss the case based on the doctrine of res judicata. The tenant attempted to respond to this motion by explaining the problems he experienced at the residence and the difficulties he had as a tenant. Further, he attempted to explain his reasoning for filing the petition.

The housing provider argued that any issues the tenant was inclined to raise were preempted by the judgment of the Landlord and Tenant Branch of the Superior Court. In support of this argument, the housing provider recited the activities that occurred in LT 21443-02. After hearing arguments for both sides, the hearing examiner stated that he was inclined to grant the housing provider's motion for dismissal. The hearing examiner cited the default judgment entered in Superior Court, Landlord and Tenant Branch as the reason for his ruling. At the same time, the hearing examiner advised the tenant to file an appeal of the court's judgment and informed him that the hearing examiner's decision could be appealed to the Commission.

On September 23, 2002, the Commission initiated review of the hearing examiner's decision and order pursuant to D.C. OFFICIAL CODE § 42-3502.16(h) (2001) and 14 DCMR § 3808 (1991).[1] The Commission held a hearing on December 3, 2002 to provide the parties an opportunity to present arguments on the issues identified by the Commission; both parties appeared.

II. ISSUE ON APPEAL

In its notice of initiated review, the Commission raised the following issue.

> Whether the hearing examiner's decision to dismiss, with prejudice, the appeal in Magby v. Wingate Apartments, TP 27,461 (OAD Aug. 14 2002), by invoking the doctrine of res judicata, was in error where the OAD record does not contain a decision by the Superior Court of the District of Columbia, Landlord and Tenant Branch, finally adjudicating the case on the merits.

Notice of Commission Initiated Review (RHC Sept. 23, 2002) at 1.

III. DISCUSSION OF THE ISSUE

Whether the hearing examiner's decision to dismiss, with prejudice, the appeal in Magby v. Wingate Apartments, TP 27,461 (OAD Aug. 14, 2002), by invoking the doctrine of res judicata was in error where the OAD record does not contain a decision by the Superior Court of the District of Columbia, Landlord and Tenant Branch, finally adjudicating the case on the merits.

The hearing examiner concluded as a matter of law, that "res judicata is a bar to further adjudication of the instant tenant petition because a valid, final disposition was made in the prior

[1] The regulation, 14 DCMR § 3808 (1991), provides:

> 3808.1 Not later than twenty (20) days after the deadline for the parties to file an appeal, the Commission may initiate a review of any decision of the Rent Administrator.
>
> 3808.2 The Commission shall serve the parties who appeared before the hearing examiner with its reasons for initiating a review and shall inform them of their right and opportunity to present arguments on the issues identified by the Commission.
>
> 3808.3 All due process rights afforded parties in a review commenced by a notice of appeal shall also be provided when the review is initiated by the Commission.

Landlord and Tenant Court Case LT 21443-02. The parties are the same and the issues and evidence necessary to prove the issues could have been the same, as in T/P 27,461." Magby v. Wingate Apartments, TP 27,461 (OAD Aug. 14, 2002) at 4. The hearing examiner did not err when he dismissed TP 27,461 pursuant to the doctrine of res judicata because each element of the three-prong test to establish the defense is satisfied.

To properly answer the question raised on appeal, it is necessary to engage in an analysis of the doctrine of res judicata.

> The doctrine of res judicata (claim preclusion) provides that "a final judgment on the merits of a claim bars relitigation in a subsequent proceeding of the same claim between the same parties or their privies." When a party invokes the doctrine of res judicata, the party must present sufficient evidence to enable the hearing examiner to issue findings of fact and conclusions of law concerning the following:
>
> (1) Whether the claim was adjudicated finally in the first action;
> (2) Whether the present claim is the same claim as the claim which was raised or which might have been raised in the prior proceeding; and
> (3) Whether the party against whom the plea is asserted was a party or in privity with a party in the prior case.

Patton v. Klein, 746 A.2d 866, 870 (D.C. 1999) quoted in Frank v. The Barac Co., TP 25,075 (RHC Aug. 20, 2002).

The first question to consider is whether a judgment entered in default constitutes a final judgment on the merits. It has been previously stated that "a default judgment, as distinguished from one resulting from active litigation, should not serve as the basis for application of the doctrine of res judicata; that the doctrine … should bow to the stronger policy of affording defendants their day in court." Gordon v. William J. Davis, Inc., 270 A.2d 138, 139 (D.C. 1970). The court in responding to this contention stated:

> "[W]e could hardly entertain seriously appellant's proposition that we should carve out an area in Landlord and Tenant law and decline to apply there the

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3808.4 In appeals initiated pursuant to this section, the provisions of §§3802.10, 3802.11 and 3805.5 shall not apply.

> doctrine of res judicata where there has been a default judgment in the Landlord and Tenant Branch of the trial court... Appellant is bound by the prior judgments..."

Id. at 140.

In the present case, the record contains a signed Court Clerk's Memorandum with a showing that the housing provider was granted judgment for possession by default at 12:50 p.m., on July 25, 2002. This is sufficient to establish that a default was entered in the Superior Court of the District of Columbia, Landlord and Tenant Branch. Therefore, the first prong of the test is satisfied.

The second question to consider is whether the issues raised in the tenant petition could have been raised in the Landlord and Tenant action. "Res judicata is an affirmative defense that must be pleaded *and established by the proponent.*" Johnson v. Rental Hous. Comm'n, 642 A.2d 135, 139 (D.C. 1994) (emphasis added). Thus, the burden fell upon the housing provider to establish that the tenant waived his opportunity to present evidence concerning the issues pleaded in the tenant petition by not appearing in Superior Court.

At the OAD hearing, counsel for the housing provider stated: "The issue preclusion of the default judgment in Landlord/Tenant Court should operate to preclude any claims having to do with offsets for housing code violations here." OAD Hearing Tape (Aug. 6, 2002). The requirement set forth in Johnson is that the proponent provides adequate evidence for the trier of fact to determine that the claims raised in the instant case could have been adjudicated in a prior action. 642 A.2d at 139.

In this case, there is only one issue raised, and that issue concerns a reduction in services and facilities. "The Superior Court and the Rent Administrator have concurrent jurisdiction over claims related to a reduction of services and facilities, which may be proven by showing

violations of the housing code." Bedell v. Clark, TP 24,979 (RHC Apr. 29, 2003) at 7 (citing Robinson v. Edwin B. Feldman Co., 514 A.2d 799 (D.C. 1986)). There is ample law in this jurisdiction allowing a tenant to raise housing code violations as a defense to a suit for possession for non-payment of rent. Compare McKenzie v. McCulloch, 634 A.2d 430 (D.C. 1993) (reversing directed verdict where substantial testimony and evidence of housing code violations was submitted), and Robinson v. Edwin B. Feldman Co., 514 A.2d 799 (D.C. 1986) (affirming summary judgment for possession where the housing provider showed that housing code violations had been abated). In light of the extensive case law regarding the single claim raised in the petition, the housing provider satisfied the second prong of the test.

The final question is whether the parties in the two cases are the same. In LT 21443-02, the parties were Wingate Apartments suing Duane B. Magby. Although the roles are reversed, and now the tenant is bringing the petition, the parties remain identical. The third prong of the test is satisfied.

IV. CONCLUSION

The rule set forth in Patton requires that all elements of a three-prong test be satisfied to

apply the doctrine of res judicata. Analysis of the doctrine, applying the facts of the case, shows that each of the requisite prongs is satisfied. Accordingly, the hearing examiner's decision in TP 27,461 is affirmed.

SO ORDERED.

RUTH R. BANKS, CHAIRPERSON

RONALD A. YOUNG, COMMISSIONER

JENNIFER M. LONG, COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in TP 27,461 was served postage prepaid by priority mail with delivery confirmation this **13th day of June 2003** to:

Duane Brian Magby
2015 Belfast Drive
Fort Washington, MD 20745

Stephen O. Hessler, Esquire
729 15th Street, N.W.
Suite 200
Washington, D.C. 20005

LaTonya Miles
Contact Representative