DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,501

In re: 1930 Columbia Road, N.W., Unit 316

Ward One (1)

ABDUL W. AMIRI
Tenant/Appellant

v.

GELMAN MANAGEMENT COMPANY
Housing Provider/Appellee

ORDER ON MOTION FOR RECONSIDERATION

October 20, 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.

On October 3, 2003, the Commission issued its decision and order, which held that Abdul W. Amiri, Tenant, could not recover for housing code violations that were eight (8) years in duration, because that violated the three year statute of limitations in the Act, D.C. OFFICIAL CODE § 42-3502.06(e) (2001).[1]

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[1] D.C. OFFICIAL CODE § 42-3502.06 (e) states: "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."

On October 8, 2003, the Tenant filed a motion for reconsideration of the Commission's decision. The Tenant wrote several paragraphs in the motion for reconsideration. The paragraphs, in relevant part, had the following statements:

1) The housing provider "substantially reduced [Tenant's] services and facilities …and [] inspector was in bad faith and failed to report all items of housing code violation[s] due to her personal understanding with the property manager." Motion at 1.

2) 2) "There are still housing code violation[s] that are not abated yet." Motion at 1.

3) "During a hearing with hearing examiner Carl Bradford, appellant stated to him that Tenant Amiri will sue the D.C. Gov't. and the inspector Ms. Rice for my good cause. Mr. Bradford said the inspector should go to reinspect. In a few days she –inspector Rice told me in her office that I was going to sue her. I said I have not decided yet.... [S]he instead sent a notice to me to pay $600 six hundred for nonsense excuse as fine. See Exhibit No. A-[]" Motion at 1-3.

4) "Inspector Butler came into my apt. on October the fourth 2002 for less or just 3 minute[] and he was angry that I complained for the race based inspection. He did not listen to me and he suffered from anger and he knew I was going to sue the D.C. Govt. and inspector Rice. As a result of his inspection he said everythings are ok with Tenant and Mrs. Rice Report.... Notice who [sic] fined Tenant was not correct. See Exhibit No. A- which was revengeful action...." Motion at 3.

5) "Mr. Butler did not come on Sep. 11 – 2002 as mentioned in appeal Commission finding of Oct - 3 –03 [sic], but he visited my apt. on the 4th of October 2002 and I called him and his assistant various times to give me copy of his finding of his 3 minutes inspection but they told me there is no any new notice or finding and I was denied to be given his notice of finding but here in the Commission's finding it is said under title (10) that Ronald Butler did not cite housing code violation. *It is untrue the housing code violation existed in eight years*, I was seeking a remedy for the last 3 years…(emphasis added). He was revengeful, but I did not seek remedy for 8 years, I wanted the last three years prior to my filing on May 1, 2002. Tenant did not seek the refund of rent as back payments for 8 years but for the Commission information I only mentioned that the housing code violation exists since 8 years. It does not mean I want remedies for eight years (emphasis added). Mr. Butler did not reinspect on Sep [sic] 11,-02 as stated...." (emphasis added.) Motion at 3-4.

6) "Respondent's lease with petitioner is based on deceptive measure. The term condition for lease was not clear but I was forced to sign the lease only. I was not told about rent increase." Motion at 5.

7) "Also my $500 security deposit is not based on term condition. After I moved in, I was asked for security and key deposit. I paid but it is not based on term condition," motion at 5.

8) "During my hearing with the Commission Appellee's attorney said, the statute of limitations is 3 years. I answered in front of you the 3 of you were present that the homeless people also know this 3 years but I do not want compensation for 8 years but only for reminder of the Commission I mentioned. Actually I want compensation for the last three years prior to my filing.... I did not mention 8 years compensation." Motion at 5.

9) "The Commission erred in its conclusion for saying the lack of refrigerator occurred 5 years before he filed but it was continued 5 years ago until after I filed. Tenant seek back rent for the last 3 years prior to my filing which is May 1, 1999 –2000 and 2001 but in Aug. 2001 was provided with refrigerator and my filing of May 1-2002 entitle me to seek back rent from May 1 – 1999 until Aug-2000 – In all its violation I do seek of [sic] refund for back rent for the 3 years." Motion at 6.

10) "The housing code violation is based on inspector's report of housing code violation[] already on file but due to bad faith of inspectors and the 2 hearing examiners the interpretation of substantial violation is racist interpretation...." Motion at 6.

11) "If the Commission review the record of Tenant filing, will not see any words to argue recovery of 8 years back rent[] The 8 year[] means violation is substantial but I am entitled for the last 3 years prior to my filing of May 1, 2002." Motion at 7.

12) "The rent increase was not based on CPI-W for Tenant Guide page 18 ... and the rent increase was never based on price increase...." Motion at 7.

THE COMMISSION'S ORDER

Motions for reconsideration are pursuant to 14 DCMR § 3823 (2001). In § 3823.3 the rule provides, "[t]he motion for reconsideration or modification shall set forth the specific grounds on which the applicant considers the decision and order to be

erroneous or unlawful." In many of the numbered paragraphs listed above, the Tenant failed to state a specific ground that caused the Commission's decision "to be erroneous or unlawful." For instance, the paragraphs numbered 1, 2, 3, 4, 6, 7, and 10 do not allege errors in the Commission's decision. Rather, they are statements of the existence of housing code violations, complaints against the housing inspectors, threats to sue them, and an allegation of racism. See Henson v. Bryant, TP 27,514 (RHC Sept. 30, 2003) (where the tenants submitted a list of sentences on the Commission's notice of appeal form and a notice of appeal which did not state errors in the Rent Administrator's decision, and the Commission dismissed the appeal). Similarly, the Tenant made statements, which do not refer to the Commission's decision and therefore, the Commission cannot rule on those statements.

In paragraphs 3 and 4, the Tenant refers to an attachment to the motion for reconsideration that is marked, "Exhibit No. A," which is a housing inspection report that is dated September 12, 2002, which is four (4) months after he filed his petition on May 1, 2002. Pursuant to 14 DCMR § 3807.5 (1991), "[t]he Commission shall not receive new evidence on appeal." This exhibit was not introduced at the hearing before the hearing examiner, and is not in the certified record. Therefore, it is new evidence, which the Commission cannot consider.

In paragraph five (5), the Tenant raised the issue that Mr. Butler, housing inspector, did not come to inspect his apartment, as stated in the Commission's decision at 2. The Tenant misunderstood the context of the statement about Mr. Butler. In the sentence above paragraphs numbered 1 through 10 in its decision, the Commission stated it was the hearing examiner's decision and order, which contained the ten (10) listed

findings of fact. Next, the Commission quoted the ten (10) findings of fact in the hearing examiner's decision, into the Commission's decision. The Commission merely copied what the hearing examiner made as findings of fact. The tenth, 10th, finding of fact related to Mr. Butler. More importantly, the Tenant did not raise an issue related to Mr. Butler and finding of fact number 10 in his notice of appeal, and therefore, cannot raise it on appeal in a motion for reconsideration.

The second point in paragraph five (5) involves two contradictory statements by the Tenant. First, in paragraph five (5), the Tenant states, "*It is untrue the housing code violation existed in eight years*, I was seeking a remedy for the last 3 years…(emphasis added)." Next, the Tenant states, "I only mentioned that the housing code violation exists since 8 years. It does not mean I want remedies for eight years (emphasis added). The Commission must rely on the record made by the Tenant, who wrote in his petition that the violations existed for eight (8) years and testified at the hearing that the violations existed for eight (8) years. The eight (8) years places the violations beyond the three (3) year statute of limitations in the Act. See Kennedy v. District of Columbia Rental Hous. Comm'n, 709 A.2d 94 (D.C. 1998).

Moreover, "[r]eview by the Commission shall be limited to the issues raised in the notice of appeal…." Statement six (6) is about the Tenant's lease, and statement seven (7) is about security and key deposits, which were not raised as issues in the notice of appeal. In addition, in one sentence in statement six (6) and in statement thirteen (13) the Tenant raised for the first time on appeal to the Commission whether his rent increase was proper under the adjustment of general applicability based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), D.C. OFFICIAL CODE §

42-3502.06 (2001). However, his notice of appeal requested recovery of all back rent based on the substantial reduction of services and facilities caused by housing code violations, not recovery of a rent refund based on an improper CPI-W rent adjustment. Therefore, because the CPI-W was not raised as an issue in the notice of appeal, it cannot be raised as an issue for the first time on appeal in a motion for reconsideration.

In paragraph eight (8), the Tenant stated that he knew about the three (3) year statute of limitations and only mentioned that the housing code violations were eight (8) years in duration. He wanted to collect three years of "back rent" for the housing code violations that lasted eight (8) years. The law prevents such an interpretation of the statute of limitations, which precludes recovery for a rent adjustment that was ripe for more than three years. See Borger Mgmt., Inc. v. Warren, TP 23,909 (RHC June 3, 1999) (where the Commission disallowed the tenant's claims of reduction of services and facilities, because they were more than three years in duration, and therefore, precluded by the statute of limitations in the Act.)

In issues 9 and 12, the Tenant, for the second time, failed to understand what the Commission wrote. The reference to the refrigerator, did not refer to the Tenant's refrigerator, it referred to another case, Peerless Properties v. Hashim, TP 21,159 (RHC Oct. 26, 1992), where the Commission denied a similar claim by Mr. Hashim for a rent refund based on a five year old claim related to Mr. Hashim's refrigerator, not the Tenant's refrigerator. The Peerless case was cited to show that the Commission did not allow recovery for stale claims that existed more three years prior to the filing of the petition. In the Tenant's case, he simply waited too long to bring his claims, which should have been filed before the three year statute of limitations expired. The Tenant

received the same ruling as Mr. Hasim; the claim is disallowed because it existed for more than three (3) years.

Based on the foregoing, the motion for reconsideration is denied.

SO ORDERED.

RUTH R. BANKS, CHAIRPERSON

RONALD A. YOUNG, COMMISSIONER

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's Rule, D.C. App. R. 15(a), provides in part: "Review of orders and decisions of an agency shall be obtained by filing with the clerk of this court a petition for review within thirty days after notice is given, in conformance with the rules or regulations of the agency, of the order or decision sought to be reviewed … and by tendering the prescribed docketing fee to the clerk." 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 certify that a copy of the foregoing ORDER on MOTION FOR RECONSIDERATION, in TP 27,501 was mailed by priority mail, with confirmation of delivery, postage prepaid, this 21st day of October to:

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