

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,567

Ward One (1)

In re: 3220 17th Street, N.W.

BERTA HERNANDEZ
FLOR PERTILLO
REINA RUIZ
DIONISIA BENITEZ
FRANCISCA RODRIQUEZ
Tenants/Appellants

v.

WAYNE GLEASON
Housing Provider/Appellee

ORDER ON MOTION TO DISMISS

September 29, 2003

BANKS, CHAIRPERSON. On September 5, 2003, the Housing Provider filed a motion to dismiss the Tenant's appeal. The motion stated: 1) that the notice of appeal was filed on June 20, 2003, before the decision was issued by the Rent Administrator on July 3, 2002. An oral ruling is not appealable citing *Brookens v. Marshall Heights Community Dev.*, TP 4284 (Aug. 31, 2000) citing *Lockart v. Cade*, 728 A.2d 65 (D.C. 1999) and the Commission lacks jurisdiction over such an appeal; 2) that the Tenants failed to serve counsel for the Housing Provider with a copy of the notice of appeal, as required by 14 DCMR § 3802.3 (1991), and therefore the appeal should be dismissed, citing *Jordan v. Charles E. Smith Co.*, TP 24,365 (June 11, 1999); 3) that the time for the Tenants to file an appeal expired on July 22, 2003, as stated in the decision; 4) that the

Tenants defaulted by not appearing below and therefore lack standing to appeal; and 5) that the Tenants did not raise an error in the decision.

On September 12, 2003, the Tenants filed an opposition to the motion to dismiss. The Tenants assert that their notice of appeal was timely filed. When the petition was dismissed for their failure to appear at the Rent Administrator's hearing on June 13, 2003, the Tenants filed a letter of appeal on June 19, 2003. The Tenants admit the letter was filed before the written order was issued on July 3, 2003, but contend it was filed on a final decision, as required by 14 DCMR § 3802.2 (1991). Moreover, after the written order was issued on July 3, 2003, the Tenants filed a second notice of appeal (letter) on July 21, 2003. Attached to that letter was a Commission form for noting an appeal.

The Tenants asserted that the reason they arrived at 11 a.m., instead of 9 a.m., on June 13, 2003, for the hearing is because that was the time that the prior hearing commenced. The Tenants claim that Hearing Examiner Gerald Roper stated that the hearing on June 13, 2003 would start at the same time as the June 10, 2003 hearing.

On June 10, 2003, the hearing examiner also added substituted parties to the petition and two of the parties, Dionisia Benitez and Francisca Rodriguez, were absent from the June 10, 2003 hearing, although they were added as parties. The praecipe in the certified record (R.) at 103 stated:

The referenced tenant petition is hereby amended to substitute Bertha Hernandez, Flor Portillo, Reina Ruiz, Dionisia Benitez, and Francisca Rodriguez as individual petitioners in place and in stead [sic] of "Savings [sic] Our Rights" Tenants Association....

The certified record does not contain a copy of notice of the June 13, 2003 hearing, to the substituted parties.

THE COMMISSION'S ORDER

The Commission listened to the tape of the hearing on June 10, 2003, which occurred immediately before the hearing on June 13, 2003. On June 10, 2003, the hearing examiner did not address the parties and state the date and time of the next hearing, on June 13, 2003. His last words were, "I'll see somebody on Friday." (OAD hearing tape June 10, 2003).

Subsequently, the hearing examiner did not issue or cause to be issued a written notice of the next hearing to the Tenants, especially the substituted parties, as required by the rules and the Act, D.C. OFFICIAL CODE § § 42-3502.16(b)-(c) (2001), which provides:

(b) Immediately upon receipt of the petition, the Rent Administrator shall notify the nonpetitioning party, housing provider or tenant, by certified mail or other form of service which assures delivery of the petition, of the right of either party to make, within 15 days after the receipt of the notice, a written request for a hearing on the petition. The Rent Administrator may deny the petition if the issue is moot or the petition does not comply with subsection (a) of this section.

(c) If a hearing is requested timely by either party, notice of the time and place of the hearing shall be furnished the parties by certified mail or other form of service which assures delivery at least 15 days before the commencement of the hearing. The notice shall inform each of the parties of the party's right to retain legal counsel to represent the party at the hearing. (emphasis added.)

The rule, 14 DCMR § 4000.2 (1991), requires:

All hearings shall be conducted in accordance with the procedures for contested cases set forth in the D.C. Administrative Procedure Act, effective October 21, 1968 (82 Stat. 1204), D.C. Official Code §2-501 *et seq.* (2001).

The District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE § 2-509(a) (2001) requires:

In any contested case, all parties thereto shall be given reasonable notice of the afforded hearing by the Mayor or the agency, as the case may be. The notice shall state the time, place, and issues involved (emphasis added).

The Rent Administrator rule, 14 DCMR § 3906.3 (1991), provides:

No substitution or addition of parties may occur unless all necessary parties are provided an opportunity to file written arguments in support of or opposition to a motion for substitution or addition of parties.

Cited in Matthews v. Baccous, TP 24,470 (RHC Jan. 28, 2000) at 6.

The certified record shows, along with the hearing tape, that the hearing examiner did not give reasonable notice of the date and time of the June 13, 2003 hearing. Cf. Joyce v. District of Columbia Rental Hous. Comm'n 741 A.2d 24, (D.C. 1999) (where the court reversed because of the hearing examiner's failure to follow requirements in the Act for service of the decision and order by certified mail or other manner that assures delivery). In the instant case, the hearing examiner did not give any notice of the hearing on June 13, 2003, to the Tenants who were present at or absent from the hearing on June 10, 2003. Moreover, the petition was amended by adding two parties, Tenants, who did not receive their right to file written argument in support or opposition to the ruling to add them as parties, as required by 14 DCMR § 3906.3 (1991).

The Commission in Dias v. Perry, TP 24,379 (RHC Dec. 27, 1999) stated:


The failure to give proper notice is a violation of due process. A 'hearing' begins with '[n]otice of the proposed action and the grounds asserted for it.' Kenneth Culp Davis and Richard J. Pierce, Jr., Administrative Law Treatise, § 9.5, (3rd ed.) p. 47. In this case, the record is devoid of proof of the procedural safeguard of proper notice in accordance with the Act. That was a denial of due process for the Housing Providers in this case.

The Commission concludes that on July 21, 2003, the Tenants timely filed in a letter with the Commission's appeal form attached a notice of appeal from the July 3,

2003 decision and order dismissing their petition. The decision and order stated the last day for filing an appeal was July 22, 2003. They filed before that date. However, because counsel for the Housing Provider claims he did not receive the notice of appeal, the Tenants are required to serve their July 21, 2003 letter with the Commission's notice of appeal form attached to it on the Housing Provider, with a certificate of service that complies with 14 DCMR §§ 3801.8; 3803.7 (1991). Failure to properly serve counsel may result in dismissal of the appeal. See Harrell v. Hous. Opportunity for Women, TP 24,954 (RHC Nov. 24, 2000), Steelman v. Uzomah, TP 27,629 (RHC July 3, 2003).¹

Therefore, for all of the foregoing reasons the motion to dismiss is denied.

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON

¹ The Commission notes that the certificate of service on the opposition to the Appellee's motion to dismiss does not comply with the rules. All filed documents must have a certificate of service that complies with 14 DCMR § 3803.7 (1991).

CERTIFICATE OF SERVICE

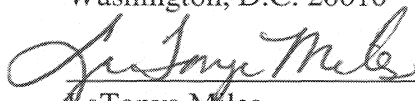
I certify that a copy of the foregoing ORDER ON MOTION TO DISMISS in TP 27,567 was mailed by priority mail, with confirmation of delivery, postage prepaid this **29th day of September, 2003**, to:

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