

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,588

In re: 5000 Illinois Avenue, N.W.

Ward Four (4)

RUTH RICHARDS

Tenant/Appellant

v.

EVA WOODS

Housing Provider/Appellee

DECISION AND ORDER

July 15, 2004

PER CURIAM. This matter is before the District of Columbia Rental Housing Commission (Commission) pursuant to the Rental Housing Act of 1985 (Act), D.C. Law 6-10, 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) also govern the proceedings.

I. PROCEDURAL BACKGROUND

Ruth Richards, tenant, filed Tenant Petition (TP) 27,588 with the Rental Accommodations and Conversion Division (RACD) on August 13, 2002. In the petition, the tenant alleged that the housing provider violated the provisions of the Act when the housing provider did the following: 1) failed to properly register the housing accommodation with the RACD; 2) failed to provide the tenant with a proper thirty (30) day notice of rent increase, before the rent increase became effective; and 3) permanently

eliminated and substantially reduced services and/or facilities provided in connection with the unit.

The hearing examiner, Gerald J. Roper, convened the hearing on October 24, 2002. Notice of the hearing was furnished to the parties in accordance with D.C. OFFICIAL CODE § 42-3502.16(c) (2001). Petitioner, Ms. Ruth Richards, and Respondent, Ms. Eva Woods, were both present at the hearing along with Karyn Dobroskey, counsel for the Petitioner, Anne Marie Hay, Supervising Attorney for the Petitioner, and Mr. Thomas J. Holman, agent for the Respondent. Also present were Mr. Keith and Ms. Carol Richards, witnesses for the Petitioner.

On November 20, 2003, the hearing examiner issued the decision and order. The hearing examiner dismissed TP 27,588, concluding as a matter of law that the housing provider was entitled to the small landlord exemption from rent control pursuant to the provisions of D.C. OFFICIAL CODE § 42-3502.05(a)(3) (2001).¹ The hearing examiner decided that the housing provider's failure to timely file the Claim of Exemption Form was excused, based on the "special circumstances" exception approved by the District of Columbia Court of Appeals in Hanson v. District of Columbia Rental Hous. Comm'n, 584 A.2d 592 (D.C. 1991) and Boer v. District of Columbia Rental Hous. Comm'n, 564 A.2d 54 (D.C. 1989). The hearing examiner concluded that he lacked jurisdiction to adjudicate Petitioner's complaints involving whether an improper thirty (30) day notice

¹ D.C. OFFICIAL CODE § 42-3502.05(a)(3) provides that:

- (a) Sections 42-3502.05(f) through 42-3502.19, except § 42-3502.17, shall apply to each rental unit in the District except:

...

- (3) Any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 rental units whether in the same structure or not, provided:

(A) The housing accommodation is owned by not more than 4 natural persons....

of rent increase was given and whether there had been a reduction in services and facilities.

II. ISSUES ON APPEAL

The Tenant/Petitioner raised the following issues on appeal:

- A. Whether the hearing examiner erred in determining that the housing accommodations was exempt from rent control under D.C. OFFICIAL CODE § 42-3502.05(a)(3) (2001), during Appellant's tenancy?
- B. As a result of the error in ruling that Appellee was exempt from rent control, whether the examiner erred:
 1. In determining that the rent increase from \$500.00 per month to \$600.00 per month was proper under the Rental Housing Act of 1985?
 2. In failing to consider whether services and/or facilities provided in connection with the rental unit had been permanently eliminated?
 3. In failing to consider whether services and/or facilities provided in connection with the rental unit had been substantially reduced?
 4. In failing to consider whether Housing Provider/Respondent acted knowingly and/or in bad faith so that penalties and/or fines should be imposed?

Notice of Appeal at 1-2.

III. DISCUSSION OF THE CASE

A. Whether the hearing examiner erred in determining that the housing accommodations was exempt from rent control under D.C. OFFICIAL CODE § 42-3502.05(a)(3) (2001), during Appellant's tenancy.

In Hanson, the court set out special circumstances which would otherwise excuse a housing provider from penalties for failing to timely file a Registration/Claim of Exemption form. See also Sigal v. Snider Bros. Prop. Mgmt., Inc., TP 20,335 (RHC Mar. 11, 1988). In Hanson, the Court stated that this exception would apply:

[where] a landlord who rents a single-family home, within which he has resided, at a reasonable rent but who fails to file a claim of

exemption, ... if he can establish to the satisfaction of the examiner that he is *not a landlord regular* and that he *reasonably was unaware* of the requirement of filing a claim of exemption.

Hanson, at 596 (quoting Gibbons v. Hanes, TP 11, 076 (RHC July 11, 1984)) at 3 (emphasis added). In the instant case, the housing provider met the test of not being a landlord in the regular course of business, and who owned four or fewer rental units. See D.C. OFFICIAL CODE § 42-3502.05(a)(3) (2001). However, the housing provider failed to meet the Hanson test of being “reasonably unaware of the requirement of filing a claim of exemption.” Id. The housing provider failed to qualify for exemption because at no time did the housing provider inform the Appellant, that the accommodation was exempt from the strictures of the Act.

On July 11, 2002, the housing provider filed a Registration/Claim of Exemption Form with the RACD, illustrating her knowledge of the Act’s requirement to file a claim of exemption. By registering the accommodation, the housing provider was no longer exempted under the special circumstances exemption, and was required to give notice of the exemption to Appellant. D.C. OFFICIAL CODE § 42-3502.05(d) (2001). The Commission has consistently held that failure to give notice to the tenant renders the exemption void because it violates D.C. OFFICIAL CODE § 42-3502.05(d) (2001) and 14 DCMR § 4101.6 (1991). See Chaney v. H.J. Turner Real Estate Co., TP 20,347 (RHC Mar. 24, 1989). In the instant case, the evidence of record reflects the housing provider failed to give Appellant notice that the housing accommodation was exempt, even after filing a Claim of Exemption form with the RACD in July 2002. See, eg. Young v. Rybeck, TP 21,976 (RHC Jan. 28, 1992) (holding that “the housing provider of an accommodation that is entitled to exemption under the small housing provider exemption,

must notify the existing tenants at the time the claim of exemption is filed; failure to do so nullifies the exemption.”).

Exemption is considered void until proper notification is given to the tenant. See Chaney, supra, at 347. D.C. OFFICIAL CODE § 42-3502.05(d) (2001) provides that:

[p]rior to the execution of a lease or other rental agreement after July 17, 1985, a prospective tenant of any unit exempted under subsection (a) of this section shall receive a notice in writing advising the prospective tenant that rent increases for the accommodation are not regulated by the rent stabilization program.

The record reflects that the housing provider did not notify Appellant of the unit’s exempt status by posting or mailing a copy of the claim of exemption. The regulation, 14 DCMR § 4101.6 (1991) further states:

[e]ach housing provider who files a Registration/Claim of Exemption form under the Act shall, prior to or simultaneously with the filing, post a true copy of the Registration/Claim of Exemption form in a conspicuous place at the rental unit or housing accommodation to which it applies, or shall mail a true copy to each tenant of the rental unit or housing accommodation.

The hearing examiner erroneously found that the housing accommodation was exempt from the rent stabilization provisions of the Act, despite evidence that the housing provider, after registering the property on July 11, 2002, failed to notify Appellant that she claimed an exemption. The failure to notify the tenant makes the claim of exemption void until proper notification is given. Chaney, supra at 4.

The housing provider has the burden of proving that he or she is exempt from the coverage of the Rental Housing Act, and that he or she served the tenant with notice. See Goodman v. District of Columbia Rental Hous. Comm’n, 573 A.2d 1293, 1297 (D.C. 1990) (citing Revithes v. District of Columbia Rental Hous. Comm’n, 536 A.2d 1007, 1017 (D.C. 1987)); Remin v. District of Columbia Rental Hous. Comm’n, 471 A.2d 275,

279 (D.C. 1984); see also Baxter v. Jackson, TP 24,370 (RHC Sept. 15, 2000) at 5.

However, there is no evidence in the record that the housing provider challenged Appellant's claim that Appellant did not receive notice of the exemption. The record therefore, indicates that the housing provider failed to meet her burden of proving exemption.

For the aforementioned reasons, the Commission reverses the examiner's finding that the housing provider was properly registered under the Act as exempt from rent control, and remands for findings of fact and conclusions of law consistent with the evidence in the record that the housing provider did not give notice to the tenant of the exemption.

B. As a result of the error in ruling that Appellee was exempt from rent control, whether the examiner erred in not addressing the following issues:

1. Whether the rent increase from \$500.00 per month to \$600.00 per month was proper under the Rental Housing Act of 1985?
2. Whether services and/or facilities provided in connection with the rental unit had been permanently eliminated?
3. Whether services and/or facilities provided in connection with the rental unit had been substantially reduced?
4. Whether Housing Provider/Appellee acted knowingly and/or in bad faith so that penalties and/or fines should be imposed?

The Commission is limited to a review of the record of the OAD hearing. See D.C. OFFICIAL CODE § 42-3502.16 (2001); 14 DCMR § 3807.4 (1991); and Meir v. District of Columbia Rental Accommodation Comm'n, 372 A.2d 566 (D.C. 1977). Moreover, the Commission cannot consider new evidence on appeal. 14 DCMR § 3807.5 (1991). Specifically, in this case, the hearing examiner did not consider issues "B 1"

through “B 4” raised in the petition, because of the initial error in finding that the housing provider was properly registered and exempt from rent control under the Act. As a result, there are no findings of fact by the hearing examiner on issues, “B 1” through “B 4” for the Commission to consider. Therefore, the Commission cannot address issues “B 1” through “B 4” raised by the Appellant.

The District of Columbia Administrative Procedure Act (DCAPA), § 2-509 (2001)² requires that a hearing examiner must make findings of fact on each material issue presented in a contested case. See also Citizen Ass’n of Georgetown Inc. v. D.C. Zoning Comm’n, 402 A.2d 36 (D.C. 1979). Therefore, the hearing examiner’s failure to address and resolve the issues raised by Appellant is error requiring a remand. Accordingly, the Commission remands the case for further consideration by the hearing examiner.

IV. CONCLUSION

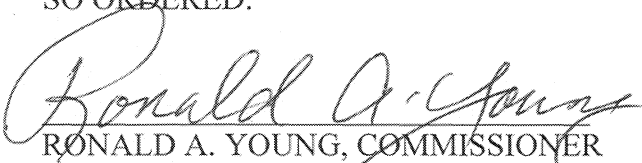
For reasons detailed above the Commission reverses the hearing examiner’s finding that the housing provider was properly registered under the Act as exempt from rent control, and remands the remaining issues for findings of fact and conclusions of law. The Commission also orders that the hearing examiner render a decision based on the existing record without further hearing or additional evidence as the record is complete for the remand proceedings. See, eg. Charles E. Smith Co. v. Lee, TP 25,034 (RHC Jan. 15, 2003); Frank v. Barac Co., TP 25,001 (RHC Aug. 20, 2002) (citing Wire


² This section of the DCAPA states in part, that “[e]very decision and order adverse to a party to the case, rendered by the Mayor or an agent in the contested case, shall be in writing and shall be accompanied by findings of fact and conclusions of law.”

Properties v. District of Columbia Rental Hous. Comm'n, 476 A.2d 679 (D.C. 1984));

Reid v. Hughes, TP 23,577 (RHC Aug. 31, 1998). The hearing examiner is urged to carefully review the issues in the petition and the evidence in the record and issue conclusions of law that rationally flow from the findings of fact.

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'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:

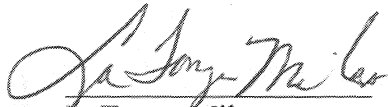
D.C. Court of Appeals
Office of the Clerk
500 Indiana Avenue, N.W., 6th Floor
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Decision and Order in TP 27,588 was mailed by priority mail with delivery confirmation, postage prepaid, this **15th day of July 2004** to:

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