

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,614

In re: 706 Brandywine Street, S.E., Unit 203

Ward Eight (8)

MARY A. VICENTE
Housing Provider/Appellant/Cross-Appellee

v.

LAVELLE JACKSON
Tenant/Appellee/Cross-Appellant

**ORDER ON MOTION FOR RECONSIDERATION
OR MODIFICATION OF DECISION**

October 17, 2005

YOUNG, COMMISSIONER. This motion for reconsideration or modification is before the Rental Housing Commission (Commission), pursuant to the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

I. PROCEDURAL HISTORY

On September 19, 2005 the Commission issued its decision in Vicente v. Jackson, TP 27,614 (RHC Sept. 19, 2005). On appeal to the Commission the tenant, through counsel, raised two issues, the second issue stated:

The hearing examiner erred in not ordering treble damages and attorney's fees as a result of actions taken in bad faith by the Housing Provider.

In response to this issue the Commission's decision stated:

Counsel for the tenant asserts on appeal, that the hearing examiner erred when he failed to award attorney's fees to the tenant. The Commission's review of the record, certified to it by the hearing examiner, reveals that the record does not contain a request for attorney's fees made by the tenant. The Commission previously held that a tenant who prevails in a proceeding before a hearing examiner who does not make a timely request for attorney's fees from the examiner is not entitled to an award of attorney's fees. Gates, Hudson & Assocs. v. Johnson, TP 23,144 (RHC Sept. 30, 1996); see 14 DCMR § 4019 (2004). The Commission will not consider issues not raised before the hearing examiner at the RACD hearing. Ford v. Dudley, TP 23,973 (RHC June 3, 1999); Terrel v. Estrada, TP 20,007 (RHC May 30, 1991). Accordingly, this appeal issue is denied.

Vicente v. Jackson, TP 27,614 (RHC Sept. 19, 2005) at 19. Filed with the tenant's Motion for Reconsideration or Modification of the Commission's decision is a blue ink stamped copy of the tenant's Motion for Attorney's Fees. The date stamp on the tenant's motion reflects that it was filed on March 30, 2005, in the Housing Regulation Administration, in conformity with 14 DCMR § 4019.1 (2004).¹ The tenant's motion was not acted upon by the hearing examiner which led to the tenant's issue on appeal. The Commission's determination that counsel for the tenant failed to submit a timely request to the hearing examiner for attorney's fees is reversed and the tenant's request for attorney's fees is remanded to the hearing examiner for review pursuant to the provisions of 14 DCMR § 4019 (2004).²

¹ The applicable regulation, 14 DCMR § 4019.1 (2004), provides:

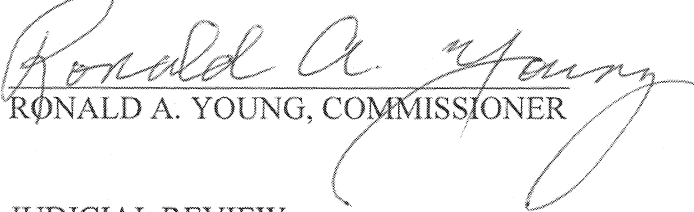
All motions for an award of attorney's fees shall be filed within ten (10) days after the Rent Administrator issues the final decision or order.

² The Commission held in Alexander v. Lenkin Co. Mgmt., Inc., TP 11,831 (RHC July 20, 1989), that the Commission will not decide attorney's fee applications for work performed before the Rent Administrator as the process is discretionary and dependent upon findings of fact. See also South Dakota Ave. Tenant's Assn. v. Cowan, TP 23,085 (RHC Sept. 14, 1998).

Therefore, the Commission's decision in Vicente v. Jackson, TP 27,614 (RHC Sept. 19, 2005), is modified to include a remand to the hearing examiner for a review of the tenant's application for attorney's fees.

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 may be contacted at the following address and telephone number:

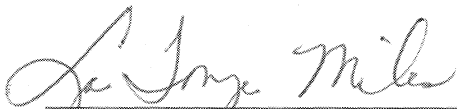
D.C. Court of Appeals
Office of the Clerk
500 Indiana Avenue, N.W., 6th Floor
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Order on Motion for Reconsideration or Modification of Decision in TP 27,614 was mailed postage prepaid by priority mail, with delivery confirmation on this 17th day of October, 2005 to:

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