

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,626

In re: 5045 Call Place, S.E., Unit 300

Ward Seven (7)

LUCINDA HAMLIN
Tenant

v.

KATHY DANIEL
Housing Provider

DECISION AND ORDER

June 10, 2005

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 that Hearing Examiner Gerald Roper issued on October 1, 2003.

I. PROCEDURAL HISTORY

On September 20, 2002, the tenant, Lucinda Hamlin, filed Tenant Petition (TP) 27,626 in the Housing Regulation Administration (HRA). In the petition she alleged four claims. The first claim was that the housing provider, Kathy Daniel, did not provide the tenant with a proper thirty (30) day notice of the rent increase before it became effective.

Second, that rent increases were taken when the tenant's unit was not in substantial compliance with the D.C. Housing Regulations. Third, that a security deposit was demanded after the tenant took possession of the unit, but was never requested previously. Finally, the housing provider violated § 502 of the Act when she retaliated against the tenant when she exercised her rights.

Hearing Examiner Gerald Roper held the evidentiary hearing on December 12, 2002. The tenant appeared with counsel, but the housing provider was not present. Following the hearing, the hearing examiner issued a decision and order on October 1, 2003. The decision contained the following findings of fact and conclusions of law:

Findings of Fact

After careful evaluation and analysis of the evidence, the Examiner finds as a matter of fact:

1. The Respondent, Kathy Daniel, was given notice of the Tenant Petition/Complaint filed by the Petitioner, Lucinda Hamlin and notice of the scheduled hearing (see. [sic] U.S. Postal Service confirmation no. 0302-0980-0001-4955-1915).
2. Respondent Kathy Daniel did not appear at the hearing, nor was she represented.
3. Petitioner took possession of apartment #300 in October 2000. Her rent charged was \$475.00 per month.
4. Respondent gave Petitioner two rent increase notices dated January 28, 2002, demanding a rent increase of \$25.00 and \$80.00 respectively.
5. Petitioner's current rent is \$475.00 per month.
6. Respondent made a demand for a security deposit after she acquired the housing accommodation in 2001, when the Petitioner who had been a tenant since 2000 was not required to pay a security [sic] by the previous Housing Provider.

7. Respondent retaliated against Petitioner for exercising her rights to have a housing inspection of her rental unit by instituting multi lawsuits against the Petitioner beginning in April 2002 in violation of the Act.
8. The Housing Provider's action in sending the Petitioner a notice of rent increase with a demand for a security deposit and two different rent increases was willful.

Conclusions of Law

After careful evaluation and analysis of the evidence and findings of fact, the Examiner concludes, as a matter of law:

1. Respondent requested a security deposit from Petitioner on January 28, 2002 in violation of D.C. OFFICIAL CODE § 42-3502.17 (2001).
2. Respondent has engaged in unlawful retaliatory action directed at Petitioner, in violation of D.C. OFFICIAL CODE § 42-3505.02 (2001).
3. The Housing Provider shall be fined for violation of the Act pursuant to D.C. OFFICIAL CODE § 42-3509.01 (2001).

Hamlin v. Daniel, TP 27,626 (RACD Oct. 1, 2003) at 6.

On November 5, 2003, 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). In accordance with 14 DCMR § 3808.2 (1991), the Commission held a hearing on February 26, 2004 to provide the parties with an opportunity to present arguments on the issues identified by the Commission. The Commission mailed the hearing notices by priority mail, with delivery confirmation.

When the Commission convened the hearing on February 26, 2004, the tenant was present, but the housing provider was not. The Commission reviewed the record and discovered that the record contained the United States Postal Service (USPS) tracking document, which reflects delivery to the housing provider's address on January 22, 2004.

Because this record is proof that the USPS delivered the Commission's hearing notice to the housing provider's address, the Commission has satisfied its regulations which require the Commission to observe due process guarantees and provide the parties an opportunity to present arguments on the issues identified by the Commission.

II. ISSUES

In its notice of initiated review, the Commission raised the following two issues:

- A. Whether the hearing examiner erred when he failed to consider Kapusta v. District of Columbia Rental Hous. Comm'n, 704 A.2d 286 (D.C. 1997) and relied upon Ponte v. Flasar, TP 11,609 (RHC Jan. 30, 1986) to deny a refund of rent that the housing provider demanded but never collected from the tenant.
- B. Whether the hearing examiner erred when he dismissed the tenant's claim that substantial housing code violations existed in the unit when the housing provider increased the tenant's rent.

Notice of Commission Initiated Review (RHC Nov. 5, 2003) at 1.

III. DISCUSSION

- A. **Whether the hearing examiner erred when he failed to consider Kapusta v. District of Columbia Rental Hous. Comm'n, 704 A.2d 286 (D.C. 1997) and relied upon Ponte v. Flasar, TP 11,609 (RHC Jan. 30, 1986) to deny a refund of rent that the housing provider demanded but never collected from the tenant.**

The hearing examiner erred when he failed to consider Kapusta v. District of Columbia Rental Hous. Comm'n, 704 A.2d 286 (D.C. 1997), and relied upon Ponte v. Flasar, TP 11,609 (RHC Jan. 30, 1986) to deny a refund of rent that the housing provider demanded, but never collected from the tenant. In the instant case the hearing examiner found and stated in the decision:

The evidence shows that the subject rent increase notices dated January 28, 2002 do not comport with the notice provisions for implementing a rent adjustment in accordance with 14 D.C.M.R. § 4205.4. Therefore,

[the] January 28, 2000 rent increase notices are both improper 30 day notices of rent increase.

Hamlin v. Daniel, TP 27,626 (RACD Oct. 1, 2003) at 3. Although, the hearing examiner established that the rent increases were illegal, because the tenant was not properly notified, he relied on Ponte to exercise discretion in denying a rent refund for rent demanded, but not collected from the tenant.

The codified remedy for the demand for overcharged rent is D.C. OFFICIAL CODE § 42-3509.01 (2001). The statute reads as follows:

Any person who knowingly (1) *demand*s or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of subchapter II of this chapter, or (2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent ceiling or for treble that amount (in the event of bad faith) and/or for a roll back of the rent to the amount the Rent Administrator or Rental Housing Commission determines. (emphasis added)

The case law in Kapusta v. District of Columbia Rental Hous. Comm'n, 704 A.2d 286 (D.C. 1997) relied on this statute.

As in the instant case, the housing provider in Kapusta was found to have overcharged a tenant for rent. The Commission ordered the housing provider to pay the tenant the amount charged in excess of the rent ceiling, with interest, even though the money was never collected. The District of Columbia Court of Appeals (DCCA) affirmed the Commission's order, holding that its order for a "rent refund," of overcharges made but never collected, was in agreement with § 42-3509.01.

As in the instant case, it was established that the housing provider in Ponte demanded rent over the legal amount from the tenant, but never collected it. The Commission noted in Ponte that there are two conflicting ways to decide an issue for

uncollected and overcharged rent. The first, is the unambiguous language of § 42-3509.01. In Ponte the Commission “has said continuously that certain penalties including monetary damages shall be imposed against a person who demands (or collects) illegal rent.” Ponte v. Flasar, TP 11,609 (RHC Jan. 30, 1986) at 24. The other means of deciding the issue is “limiting the imposition of monetary damages to cases in which illegal excess rent was actually collected.” Id. The Commission upheld this policy in numerous decisions prior to Ponte; the Commission stated “the absence of any express criticism, disapproval or reversal by the Court may be interpreted as tacit acceptance of the policy of limitation, or it may reflect the Court’s reluctance to rule on an issue not directly before it.” Id. The Commission went on to note instances in which a “knowing demand without collection should be penalized by monetary awards.” Ponte v. Flasar, TP 11,609 (RHC Jan. 30, 1986) at 26. A list of those situations are as follows:

This might be justified if the increase were particularly large or its illegality known to the landlord. Or where the increase was vigorously pressed at great cost to the tenant or in a harassing, intimidating or retaliatory manner. On the other hand, there are undoubtedly situations in which the mere demand for a rent increase, where there is no collection, does not rise to the level of seriousness or harm sufficient to warrant the imposition of a monetary penalty either singularly or trebled. Such circumstances might be found, for example, where the violation is essentially technical, where the impact on the tenants is minimal, or where the landlord takes timely action to rescind the demand or otherwise neutralize its effectiveness.

Id. The Commission then stated:

[H]earing examiners have considerable discretion under § 42-3509.01 to determine if such aggravating or mitigating circumstances exist, and consequently to impose or decline to impose monetary penalties. In this regard, it is only required that the action taken by the examiner be supported by matters of record and be justified or explained in the order of relief.

Id. The Commission made its decision based on the its earlier established policy in conjunction with § 42-3509.01.

The Commission's earlier policy concerning the demand for uncollected and overcharged rent was that monetary damages are only awarded in cases in which the overcharged rent was actually collected. In Ponte the Commission acknowledged that there was a conflict between the earlier policy and the applicable statute, and noted that the DCCA had not decided this issue. However, the court resolved the conflict in Kapusta v. District of Columbia Rental Hous. Comm'n, 704 A.2d 286 (D.C. 1997). The DCCA affirmed the Commission's order for the housing provider to pay the tenant the amount charged in excess, with interest. Cases that have cited Kapusta as controlling are: Heidary v. Gomez, TP 27,179 (RHC Oct. 24, 2003); Kamerow v. Baccous, TP 24,470 (RHC Sept. 26, 2002); and Hudley v. McNair, TP 24,040 (RHC June 30, 1999). In light of these decisions the holding in Kapusta should have been used to decide the instant case.

The Commission concludes that the hearing examiner erred when he failed to consider Kapusta, and relied upon Ponte to deny the tenant a refund of rent demanded, but never collected by the housing provider. The hearing examiner found that: the tenant's initial rent was \$475.00 per month; the tenant's current rent was \$475.00 per month; and the housing provider gave the tenant two rent increase notices, on the same day, dated January 28, 2002, demanding a rent increase of \$25.00 and \$80.00 respectively. This case is remanded to the Rent Administrator for findings of fact and conclusions of law concerning the amount of rent actually demanded, the time frame in which it was demanded, and to issue a rent refund to the tenant with interest.

B. Whether the hearing examiner erred when he dismissed the tenant's claim that substantial housing code violations existed in the unit when the housing provider increased the tenant's rent.

The hearing examiner erred when he dismissed the tenant's claim that substantial housing code violations existed in the unit when the housing provider increased the tenant's rent. In light of the hearing examiner's dismissal of the tenant's substantial code violations claim, the Commission reviewed the record to establish the extent of these claims.

The tenant provided extensive documentation of alleged housing code violations that were present in her unit when the housing provider issued the rent increase notices. She presented pictures of the following housing code violations to the hearing examiner for consideration of her claim: raised floor tiles, leaking window, mold growth, damaged air conditioning unit, and leaks in the ceiling of both the bedroom and the living room. She also testified that at the time of the rent increase notification the heaters were falling apart and unreliable, her unit was infested with vermin, the oven did not work, there was a large gap between the floor and the front door, and the bathroom pipe had a large hole that prohibited use of the sink. The housing inspector testified that she inspected the unit on June 5, 2002 and October 23, 2002. The inspector testified that she found thirteen violations during her June 5, 2002 inspection, the violations she testified to read as follows: space between the front door and the floor, window screens not provided, windows did not fit the frames, cooking facilities defective, cover on the radiator loose, peeling paint, and cracks and holes in the walls. The inspector re-inspected the unit during a building wide inspection on October 23, 2002. During this re-inspection the inspector discovered four new violations, and found that four out of the thirteen original

violations had been abated. The investigator testified to the violations she found on October 23, 2002 reads as follows: paint on the inside of the window peeling, loose floor tiles, and parts of the radiator were loose. Records of both housing inspections were mailed to the housing provider. Documentation of the housing inspections were not entered into evidence at the hearing.

The Commission held in Nwanko v. William J. Davis, Inc., TP 11,728 (RHC Aug. 6, 1986), which was affirmed by the DCCA in Nwanko v. District of Columbia Rental Hous. Comm'n, 542 A.2d 827 (D.C. 1988), "that the crucial inquiry is whether, in fact, an alleged substantial housing code violation exists at the time the rent increase is taken." Hutchinson v. Home Realty, Inc., TP 20,523 (RHC Sept. 5, 1989) at 6. This decision has been cited in the following cases: Stancil v. Carter, TP 23,265 (RHC July 31, 1997); Hutchinson v. Home Realty, Inc., TP 20,523 (RHC Sept. 5, 1989).

By dismissing the tenant's substantial housing code violations claim, the hearing examiner's decision did not comport with the decision established in Nwanko. He failed to address and evaluate the controversy over whether there existed substantial housing code violations when the housing provider increased the tenant's rent.

This issue is remanded to the Rent Administrator, for decision on the present record with instructions to make findings of fact and conclusions of law on the tenant's claim that substantial housing code violations existed in the rental unit when the housing provider increased the tenant's rent.

IV. CONCLUSION

The hearing examiner's decision is remanded to the Rent Administrator for findings of fact and conclusions of law concerning the amount of rent actually demanded,

the time frame in which it was demanded, and to issue a rent refund with interest. The Commission further orders that the Rent Administrator establish whether substantial housing code violations existed in the rental unit when the housing provider increased the tenant's rent. In accordance with the case law established in Wire Properties v. District of Columbia Rental Hous. Comm'n, 476 A.2d 679 (D.C. 1984), the hearing examiner will not be permitted to conduct a hearing or base his decision on additional evidence.

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON



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 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

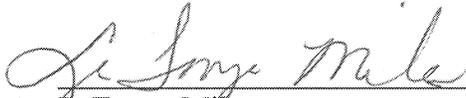
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Decision and Order in TP 27,626 was mailed by priority mail with delivery confirmation, postage prepaid, this 10th day of June 2005 to:

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