

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 27,678

In re: 3549 11<sup>th</sup> Street, N.W.

Ward One (1)

**BILLY T. NORWOOD**  
Tenant

v.

**MARK S. PETERS**  
Housing Provider

**DECISION AND ORDER**

**June 14, 2006**

**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). In accordance with D.C. OFFICIAL CODE § 42-3501.01-3509.07 (2001), on May 26, 2005, the Commission initiated review of the Rent Administrator's April 22, 2005 decision and order in TP 27,678. 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, 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

**I. PROCEDURAL HISTORY**

On November 8, 2002, Billy T. Norwood, the tenant at the housing accommodation located at 3549 11<sup>th</sup> Street, N.W. filed tenant Petition (TP) 27,678. In the petition, the tenant alleged the following:

1) That a rent increase was taken that was larger than allowed by the Act; 2) that a proper 30 day notice of rent increase was not provided before the rent increase became effective; 3) that the housing provider failed to file the proper rent increase forms with the Rental Accommodations and Conversion Division; 4) that the rent being charged exceeded the legally calculated rent ceiling for tenant's unit; 5) that the rent ceiling filed with the Rental Accommodation and Conversion Division for the tenant's unit was improper; 6) that a rent increase was taken while tenant's unit was not in substantial compliance with the District of Columbia Housing Regulations; 7) that the building in which the unit is located is not properly registered with the Rental Accommodations and Conversion Division; and 8) that retaliatory action was directed against the tenant by the housing provider.

Hearing Examiner Carl Bradford convened the hearing on the tenant petition on April 4, 2003. Tenant Billy T. Norwood appeared and presented evidence to support his assertions. The housing provider did not appear for the hearing, nor was he represented by counsel. In his decision, the hearing examiner found as a matter of fact:

1. The subject housing accommodation 3549 11th Street, N.W. is owned by Mark S. Peters.
2. Tenant Billy T. Norwood resides at 3549 11<sup>th</sup> Street, N.W. Washington, D.C.
3. Tenant's rent has been \$850.00 since December 1, 2000.
4. Tenant's rent has not been increased since the tenant moved into the building.
5. The housing provider filed his claim of exemption form on October 14, 1998.
6. The subject housing accommodation located at 3549 11<sup>th</sup> Street, N.W. is exempt from rent control based on the December 1, 1998 filing.
7. Tenant did not present any evidence to rebut the claim of exemption filed December 1, 1998.

8. Housing provider did not retaliate against tenant.

Norwood v. Peters, TP 27, 678 (RACD Apr 4, 2003)(Decision) at 1-2. The hearing

examiner concluded as a matter of law:

1. Tenant has failed to prove by a preponderance of evidence that housing provider was not registered or exempt in violation of D.C. OFFICIAL CODE § 42-3502.05(g) (2001).
2. Housing provider did not retaliate against tenant in violation of D.C. OFFICIAL CODE § 42-3502.02 [sic] (2001).
3. All other issues are dismissed.

Id. at 6.

The tenant filed a timely notice of appeal to the RACD April 4, 2003 decision with the Commission. The Commission held the appellate hearing on February 3, 2005.

The notice of appeal stated the following issues:

- A. Examiner found the housing provider's property exempt under law without legally admitted evidence. (Tenant did not submit Exhibit #1 into evidence and landlord was not present or represented at the hearing to submit evidence.)
- B. Hearing Examiner applied the law incorrectly, as it relates to retaliatory action against tenant. (Landlord was not present to rebut any presumption or retaliation).
- C. The findings of fact are not supported or logically related to the evidence in [the] record.
- D. The conclusions of law in regards to D.C. [Official] Code, Section 42-3502.05(g) (2001) and Section 42-3502.02 (2001) are completely misapplied in this case.
- E. The landlord/housing provider refused to attend hearing nor was he represented by an attorney. The landlord should have been ruled in default.

Norwood v. Peters, TP 27,678 (RHC Feb. 3, 2005) at 3.

In its February 3, 2005 [remand] decision and order, the Commission reversed the hearing examiner's determination that the property was exempt based on the small housing provider exemption in the Act, D.C. OFFICIAL CODE § 42-3502.05(a)(3) (2001). The Commission also reversed the hearing examiner's determination that there was no retaliation, pursuant to D.C. OFFICIAL CODE § 42.3505.02 (2001). Accordingly, the RACD decision was remanded to the hearing examiner to "consider all of the tenant petition issues, which he dismissed and comply with the law on retaliation and small housing provider, as explained in the decision." Id. at 9

On April 22, 2005 the hearing examiner issued his remand decision and order. In his decision the Examiner found, as a matter of fact:

1. The subject housing accommodation 3549 11 Street, N.W. is owned by Mark S. Peters.
2. Tenant Billy T. Norwood resides at 3549 11<sup>th</sup> Street, N.W. Washington, D.C.
3. Tenant's rent has been \$850.00 since December 1, 2000.
4. Tenant's rent has not been increased since tenant moved into the building.
5. The RACD record reflects the housing provider filed his claim of exemption form on October 14, 1998.
6. The housing provider acted in bad faith.
7. Tenant did not present any evidence to rebut the claim of exemption filed December 1, 1998.
8. The housing provider did not retaliate against tenant.

Norwood v. Peters, TP 27,768 (RACD Apr. 22, 2005) at 5.

The hearing examiner concluded as a matter of law:

1. Tenant has proven by a preponderance of the evidence that the housing provider was not registered or exempt in violation of D.C. OFFICIAL CODE, § 42-3502.05(g)(2001). Accordingly the housing provider shall be fined \$500.00 for failing to establish that he was properly registered.<sup>1</sup>
2. The housing provider did retaliate against tenant in violation of D.C. OFFICIAL CODE § 42-3502.02 (2001).
3. The housing provider did act in bad faith.

Id. at 5-6.

On May 26, 2005, the Commission issued a notice of Commission Initiated Review of the hearing examiner's April 22, 2005 decision and order pursuant to D.C. OFFICIAL CODE § 42-3502.16(h) (2001) and 14 DCMR § 3808 (2004).<sup>2</sup> In accordance with 14 DCMR § 3808.2 (2004), the Commission mailed the hearing notices by priority mail, with delivery confirmation. On July 29, 2005, the tenant waived his right to a hearing by mailing a signed Waiver of Right to a Hearing in Commission Initiated Review. The housing provider did not return the waiver form nor did he appear at the hearing.

## II. ISSUES

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<sup>1</sup> The Commission notes that the hearing examiner committed a plain error when he made finding of fact #7 which is contradictory to conclusion of law #1.

<sup>2</sup> The regulation, 14 DCMR § 3808 (2004), provides:

- 3808.1 Not later than twenty (20) days after the deadline for the parties to file an appeal, the Commission may initiate a review of any decision of the Rent Administrator.
- 3808.2 The Commission shall serve the parties who appeared before the hearing examiner with its reasons for initiating a review and shall inform them of their right and opportunity to present arguments on the issues identified by the Commission.
- 3808.3 All due process rights afforded parties in a review commenced by a notice of appeal shall also be provided when the review is initiated by the Commission.
- 3808.4 In appeals initiated pursuant to this section, the provisions of §§3802.10, 3802.11 and 3805.5 shall not apply.

The Commission identified the following two issues in the Notice of Commission Initiated Review:

1. Whether the hearing examiner erred when he failed to consider all the issues that were dismissed in his April 4, 2003 decision and order.
2. Whether the hearing examiner erred when he found as a matter of fact that the housing provider did not retaliate against the tenant, but concluded as a matter of law that the housing provider retaliated against the tenant.

Notice of Commission Initiated Review at 3.

### **III. DISCUSSION OF ISSUES**

#### **A. Whether the hearing examiner erred when he failed to consider all the issues that were dismissed in his April 4, 2003 decision and order.**

The tenant raised eight (8) issues in TP 27,678. In order to support these issues, the tenant presented copies of correspondence between himself and the housing provider. The letters referred to the tenant's complaints about the condition of the apartment; a note from the housing provider giving notice of the rent increase and its effective date; letters indicating the tenant's disapproval with the proposed rent increase; and the housing provider's claim of exemption form. Norwood v. Peters, TP 27,678 (RACD Apr. 4, 2003) at 3.

In his April 4, 2003 decision and order the hearing examiner solely adjudicated on the issue of retaliation based on his belief that "the Examiner has no jurisdiction to adjudicate any of the rents or rent ceiling adjustment issues raised in this case." Id. at 4.

However, following the tenant's appeal, the Commission remanded this case in its decision dated February 3, 2005 to the hearing examiner with instructions to consider all of the issues dismissed, which included retaliation. Once again, the Examiner failed to

consider issues 1 through 6<sup>3</sup> as instructed by the Commission. It is well established that the Act does not invest the hearing examiner with the power to nullify a determination of the Rental Housing Commission, whereas the District of Columbia Court of Appeals has the power to review Commission decisions. The hearing examiner's refusal to comply with the Commission's remand instructions is not in accordance with the law. See e.g. Envoy Assocs. Ltd. P'ship v. Word, TP 12,100 (RACD July 28, 1989) (finding that the hearing examiner overruled the Commission's holding by refusing to follow remand instructions). We remand the decision once again to the hearing examiner to consider the issues previously dismissed in accordance with the instructions contained in our decision and order in Norwood v. Peters, TP 27,678 (RHC Feb. 3, 2005).

**B. Whether the hearing examiner erred when he found as a matter of fact that the housing provider did not retaliate against the tenant, but concluded as a matter of law that the housing provider retaliated against the tenant.**

Pursuant to the Commission's remand instructions, the hearing examiner revisited the law on retaliation. The law on retaliation is:

(a) No housing provider shall take any retaliatory action against any tenant who exercises any right conferred upon the tenant by this chapter, by any rule or order issued pursuant to this chapter, or by any other provision of law. Retaliatory action may include any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit, action which would unlawfully increase rent, decrease

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<sup>3</sup> The original issues in the April 4, 2003 decision and order were as follows:

- 1) Was the rent increase larger than allowed by the Act?
- 2) Whether a proper 30 day notice of rent increase was not provided before the rent increase becomes effective?
- 3) Whether the housing provider failed to file the proper rent increase forms with the Rental Accommodations and Conversion Division?
- 4) Whether the rent being charged exceeds the legally calculated rent ceiling for Tenant's unit?
- 5) Whether the rent ceiling filed with the Rental Accommodation and Conversion Division for Tenant's unit was proper?
- 6) Whether a rent increase was taken while tenant's unit was not in compliance with the District of Columbia Housing Regulations?

services, increase the obligation of a tenant, or constitute undue or unavoidable inconvenience, violate the privacy of the tenant, harass, reduce the quality or quantity of service, any refusal to honor a lease or rental agreement or any provision of a lease or rental agreement, refusal to renew a lease or rental agreement, termination of a tenancy without cause, or any other form of threat or coercion.

(b) In determining whether an action taken by a housing provider against a tenant is retaliatory action, the trier of fact shall presume retaliatory action has been taken, and shall enter judgment in the tenant's favor unless the housing provider comes forward with clear and convincing evidence to rebut this presumption, if within the 6 months preceding the housing provider's action, the tenant:

(1) Has made a witnessed oral or written request to the housing provider to make repairs which are necessary to bring the housing accommodation or the rental unit into compliance with the housing regulations;

(2) Contacted appropriate officials of the District government, either orally in the presence of a witness or in writing, concerning existing violations of the housing regulations in the rental unit the tenant occupies or pertaining to the housing accommodation in which the rental unit is located, or reported to the officials suspected violations which, if confirmed, would render the rental unit or housing accommodation in noncompliance with the housing regulations;

(3) Legally withheld all or part of the tenant's rent after having given a reasonable notice to the housing provider, either orally in the presence of a witness or in writing, of a violation of the housing regulations;

(4) Organized, been a member of, or been involved in any lawful activities pertaining to a tenant organization;

(5) Made an effort to secure or enforce any of the tenant's rights under the tenant's lease or contract with the housing provider; or

(6) Brought legal action against the housing provider.

D.C. OFFICIAL CODE § 42-3505.02 (2001).

The hearing examiner correctly concluded that as a matter of law, the housing provider retaliated against the tenant in violation of D.C. OFFICIAL CODE, § 42-3502.02 (2001) and fined him \$500.00 for failing to establish that he was properly registered.

Norwood v. Peters, TP 27,678 (RACD Apr. 22, 2005) at 5. However, the hearing examiner presented an inconsistent ruling when he made a finding of fact stating that the



housing provider did not retaliate against the tenant. We remand this matter to the hearing examiner with instructions to make a finding of fact that is consistent with the conclusion of law that the housing provider retaliated against the tenant in violation of D.C. OFFICIAL CODE § 42-3502.02 (2001). See Alexandra Corp. v. Armstead, TP 24, 777 (RHC Aug. 15, 2000) at 9 (where issue C was remanded due to a conflict between the hearing examiner's finding of fact and order, where the finding of fact stated a fine of \$75.00 but ordered a fine of \$750.00); See also George Washington Univ. Med. Ctr. v. District of Columbia Dep't of Employment Servs., 704 A.2d 1194 (D.C. 1997) (finding that irreconcilable or conflicting findings are cause for remand for clarification); Columbia Realty Venture v. District of Columbia Rental Hous. Comm'n, 573 A.2d 362 (D.C. 1990) (where the court remanded for clarification of findings of fact which were irreconcilable).

#### IV. CONCLUSION

For the forgoing reasons, the Commission remands this matter to the Rent Administrator for action consistent with this decision to consider issues 1 through 6 as stated in the February 3, 2005 decision and order. Further, the hearing examiner is instructed to make a finding of fact consistent with his conclusion of law that the housing provider did retaliate against the tenant. No new hearing is ordered.

SO ORDERED

  
RUTH R. BANKS, CHAIRPERSON

  
RONALD A. YOUNG, 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:

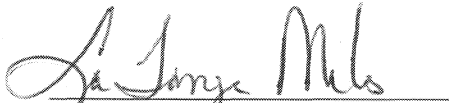
D.C. Court of Appeals  
Office of the Clerk  
500 Indiana Avenue, N.W., 6th Floor  
Washington, D.C. 20001  
(202) 879-2700

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Decision and Order in TP 27,678 was mailed by priority mail, with confirmation of delivery, postage prepaid this 14<sup>th</sup> day of June, 2006, to:

Tony Norman, Esquire  
533 Gresham Place, N.W.  
Washington, D.C. 20001

Mark S. Peters  
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