

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,782

In re: 4403 Quarles Street, N.E., Unit 12

Ward Seven (7)

KENILWORTH PARKSIDE RESIDENT MANAGEMENT CORPORATION
Housing Provider/Appellant

v.

STACCATO JOHNSON
Tenant/Appellee

ORDER ON MOTION TO DISMISS APPEAL

July 20, 2004

BANKS, CHAIRPERSON. This case is on appeal to the Rental Housing Commission from a decision and order issued by the Rent Administrator, based on a petition filed in the Rental Accommodations and Conversion Division (RACD). The applicable provisions of 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 (DCMR), 14 DCMR §§ 3800-4399 (1991), govern the proceedings.

I. THE PROCEDURES

Staccato Johnson filed Tenant Petition (TP) 27,782 on March 18, 2003. Hearing Examiner Sandra McNair issued the decision and order on December 16, 2003. On January 6, 2004, the Housing Provider filed a notice of appeal, and on January 7, 2004, the Tenant filed a notice of cross appeal. On February 3, 2004, the Commission mailed

by priority mail notices of the hearing for March 9, 2004 to the parties. The United States Postal Service (USPS) Confirmation Receipt stated for the Tenant, the mail was undeliverable as addressed. However, for reasons not in the Commission's record, the hearing was continued to April 20, 2004. Notices for that hearing were mailed by priority mail to the parties. The USPS delivery confirmation receipts stated the notice for the Housing Provider was delivered on March 23, 2004, and the notice for the Tenant was delivered on March 24, 2004. Again, the hearing was continued to another date, July 8, 2004. There are no USPS delivery confirmation receipts for either party in the Commission's files for the July 8, 2004 hearing, therefore, the Commission has no proof of delivery of the hearing notices to either party. However, the attorney for the Housing Provider appeared at the Commission's hearing, but the Tenant did not. Counsel for the Housing Provider argued the Housing Provider's appeal issues and moved to dismiss the Tenant's cross appeal.

II. THE LAW

Proper notice to the parties is mandatory. D.C. OFFICIAL CODE § 42-3502.16(j) (2001); Joyce v. District of Columbia Rental Hous. Comm'n, 741 A.2d 24, (D.C. 1999) (where the court reversed RHC for failure to hold that the Rent Administrator did not follow the requirements of Act of service of a decision on the parties by certified mail or other manner that ensures delivery). “[N]otice is consistent with the requirements of fundamental due process [when] the proceeding is one at which legal duties or privileges are to be adjudicated.” Hotel Assoc. of Washington, D.C. v. District of Columbia Minimum Wage and Industrial Safety Bd., 318 A.2d 294, 305 (D.C. 1974), cited in Reid v. Gaben, SR 20,076 (RHC Oct. 24, 2003) (where the RHC remanded the Rent

Administrator's decision for reissuance, because the United States Postal Service Track and Confirm receipt stated the item was undeliverable as addressed due to the wrong address on the certificate of service in the decision and wrong address on the priority mail receipt.) In the instant appeal, the Commission has no proof of service on for either party, notwithstanding the appearance of the counsel for the Housing Provider at the Commission's hearing. Cf. Tenants of 2724 Woodley Place, N.W. v. Lustine Realty Co., Inc., HP 20,781 (RHC June 25, 2004) (where the Commission remanded the Rent Administrator's decision because of no findings of fact and conclusions of law on delivery of the notice to the parties, who are entitled to due process notice. Similar to the instant appeal, the Housing Provider appeared, but the Tenant did not.)

III. THE CONCLUSION

The Commission has no proof in its records, that the parties received proper notice of the July 8, 2004 hearing, where the Tenant failed to appear. Accordingly, the Commission will schedule another hearing and new notices by priority mail will be sent to the parties. The motion to dismiss the cross appeal is DENIED.

SO ORDERED.



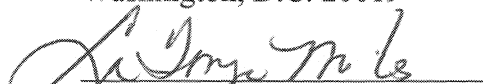
RUTH R. BANKS, CHAIRPERSON

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing ORDER ON MOTION TO DISMISS APPEAL in TP 27,782 was mailed by priority mail, with confirmation of delivery, postage prepaid this 20th day of July, 2004, to:

Morris Battino, Esquire
1200 Perry Street, N.E.
Suite 100
Washington, D.C. 20017

Staccato Johnson
1000 49th Place, N.E.
Washington, D.C. 20019



LaTonya Miles
Contact Representative
(202) 442-8949