

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,809

In re: 607 North Carolina Ave., S.E.

Ward Six (6)

JEAN MOOSKIN
Housing Provider/Appellant

v.

CHRISTIAN AND BRIDGETT BOURGE
Tenant/Appellee

ORDER ON MOTION TO DISMISS APPEAL

December 11, 2003

BANKS, CHAIRPERSON. On April 18, 2003, Christian and Bridgett Bourge, Tenants, filed Tenant Petition (TP) 27,809, and on September 26, 2003, Hearing Examiner Gerald Roper issued the decision and order on the petition. Christian and Bridgette Bourge, Tenants, appeared for the hearing and Jean Mooskin, Housing Provider, did not appear for the hearing. The hearing examiner proceeded with the hearing after confirming proper notice was sent and delivered to the Housing Provider. Decision at 1. The hearing examiner held that the Housing Provider retaliated against the Tenants and fined the Housing Provider One Thousand Dollars (\$1,000.00). On October 14, 2003, Jean Mooskin, Housing Provider, filed a timely appeal in the Commission. On October 30, 2003, the Tenants filed a motion to dismiss the appeal. On November 7, 2003, the Housing Provider filed an opposition to the motion.

The motion to dismiss the appeal stated that the Tenants "dropped" meaning dismissed their prior tenant petition, TP 27,493, with the understanding that they could refile it at a later time. TP 27,493 was filed on April 22, 2002, and dismissed with

prejudice on October 30, 2002. The Tenants vacated the rental unit and seven months later received a summons from the Housing Provider that he initiated a lawsuit against them. Therefore, on April 18, 2003, the Tenants refiled the original tenant petition in the instant case, TP 27,809, which was decided on September 26, 2003.

The opposition to the motion to dismiss the appeal stated that pro se parties are bound by the law and rules of procedure, citing Solomon v. Fairfax Village Condominium IV Unit Owner's Assoc., 621 A.2d 378, 380 n.2 (D.C. 1993). The opposition noted that the prior petition, TP 27,493, was dismissed with prejudice, which is a complete and final adjudication of the petition. The opposition also noted that the Tenants did not appeal the dismissal with prejudice and did not file a motion for reconsideration of the dismissal with prejudice. Therefore, they cannot refile their prior petition, TP 27,493, as TP 27,809, because that right was abolished in the dismissal with prejudice of TP 27,493.

The Commission reviewed the two tenant petitions to determine whether they were identical. A review of the allegations handwritten by the Tenants in TP 27,809 follows:

SERVICES AND FACILITIES

After move in landlord refused to take care of issues agreed to prior to move in (see attached). Then he only took care of sporadic new problems but would not truly address others and did nothing to correct illegal behaviors (see attached). Services then completely stopped upon his receipt in February 2002 of city code violations (see [sic] Attached [sic]).[.] On May 31st we moved out under pressure and dropped previous petition (see [sic] attached). In Jan. 2003 we received new contact from landlord regarding a lawsuit (see attached). Since we originally dropped petition due to our moving and felt all was settled, we are now refileing.

TP 27,809 at 4, Record (R.) at 87.

PLEASE USE THE SPACE BELOW TO DESCRIBE IN DETAIL THE EVENTS, EXPERIENCES, OBSERVANCES AND DATES ON WHICH YOU BASE THE ALLEGATIONS CHECKED....

After numerous attempts to contact landlord both by phone and by mail on many issues we were forced to contact the city. In addition to these issues there was the problem of the landlord refusing to provide us a copy of the signed lease. Feb [.] 6th - Landlord sent notice from city on housing violation. March 6th - no work done on violations and landlord sends notice to correct or vacate. April 7th - suspicious entry into residence by unknown person with key, reported to police. Computer[r] turned on, papers messed with, \$500.00 cash missing along with unsigned copy of lease. April 8th - Agent of landlord meets with Housing Inspector due to 30 day violation notice expiring. Agent, tenants and Housing Inspector set up dates of April 16th and 17th at 10 a.m. for work to begin. April 8th - no work done on violations and landlord sends second notice to correct or vacate. April 16th & 17th - no crew shows up to work on residence as agreed to with Housing Inspector. To date, no contact received from landlord on this. April 17th - Landlords [sic] lawyer tapes notice to correct or vacate-to door dated April 15th. May 1st - send landlord letter stating intent to vacate by June 1st. May 31st-moved out of residence and mailed letter to drop previous petition. Oct. 22nd -Received call from Housing Regulation Administration that letter had not been received and faxed them new letter. Oct 30th -petition dismissed. Jan. 21st-Received Summons for Law Suit from Landlord. Immediately started researching in order to re-file petition.

TP 27,809 at 6, R. at 84.

The prior petition, TP 27,493, reads as follows:

PLEASE USE THE SPACE BELOW TO DISCRIBE IN DETAIL THE EVENTS, EXPERIENCES, OBSERVATIONS AND DATE(S) ON WHICH YOU BASE THE ALLEGATION CHECKED ABOVE

\$1000.00 per month. After move in landlord refused to take care of issues agreed to prior to move in. (see attached)[.] Then he only took care of sporadic new problems but would not truly address others and did nothing to correct illegal behaviors (see attached). Services then completely stopped upon their receipt in February of city code violations (see attached)[.]

TP 27,493 Petition at 4; R. at 66.

PLEASE USE THE SPACE BELOW TO DISCRIBE IN DETAIL THE EVENTS, EXPERIENCES, OBSERVATIONS AND DATE(S) ON WHICH YOU BASE THE ALLEGATION CHECKED ABOVE

After numerous attempts to contact the landlord both by phone and by mail on many issues we were forced to contact the city. In addition to these issues there is the problem of the landlord not providing us a copy of the signed lease. FEB 6th - Landlord sent notice from city on housing

violations. MARCH 6th – No work done on violations and landlord sends notice to correct or vacate. APRIL 7th – Suspicious entry into residence by unknown person with key, reported to police. Computer turned on, papers messed with, \$500.00 cash missing, unsigned copy of lease missing. APRIL 8th – Agent of landlord meets with Housing Inspector due to 30 day violation notice expiring. Agent, tenants and Housing Inspector set up dates of April 16th and 17th at 10am for work to begin. APRIL 8th - No work done on violations and landlord sends second notice to correct or vacate. APRIL 16th & 17th - No crew shows up to work on residence as agreed to with Housing Inspector. To date no contact received for landlord on this. APRIL 17th – landlords [sic] lawyer tapes notice to correct or vacate to door dated April 15th.

TP 27,493 at 6; R. at 64.

THE COMMISSION'S ORDER

The Tenants stated in their motion that they did not argue the merits of TP 27,493 before the hearing examiner. They “dropped” TP 27,493, to part ways from the Housing Provider and moved out of the rental unit. Motion at 1. The Tenants filed their motion to dismiss the Housing Provider’s appeal in TP 27,809, to keep the judgment against the Housing Provider in TP 27,809 intact. Motion at 2.

The Housing Provider’s opposition to the motion to dismiss the appeal noted that the Tenants failed to file a motion for reconsideration pursuant to 14 DCMR § 4013.1, (1991) or an appeal, 14 DCMR § 3802.2, 4012.6 (1991), from the dismissal with prejudice in TP 27,493. Opposition at 2. Therefore, the Housing Provider requests that the Commission reverse the hearing examiner’s decision in TP 27,809 and remand with instructions to dismiss the tenant petition in TP 27,809, based on the defense of res judicata. Opposition at 3.

Res judicata is an affirmative defense that must be pleaded and established by the proponent.” Johnson v. District of Columbia Rental Hous. Comm’n, 642 A.2d 135, 139 (D.C. 1994). “To evaluate a claim of preclusion, the trier of fact must ‘have before it the

exhibits and records involved in the prior cases....” Id. at 139 citing Block v. Wilson, 54 A.2d 646, 648 (D.C. 1947). When the parties are the same, res judicata applies to not only the claim that was decided, “but also as to every ground which might have been presented.” Henderson v. Snider Bros., Inc. 439 A.2d 481 (D.C. 1981) (emphasis added). “Under the doctrine of claim preclusion or res judicata, when a valid final judgment has been entered on the merits, the parties or those in privity with them are barred, in a subsequent proceeding, from relitigating the same claim or any claim that might have been raised in the first proceeding (emphasis added).” Davis v. Davis, 663 A.2d 499, 501 (D.C. 1995). Cited in CT Assocs. v. Campbell, TP 27,231 (RHC Aug. 15, 2003). The party asserting res judicata has the burden of proof. Jonathan Woodner v. Adams, 534 A.2d 481, 485 (D.C. 1981).

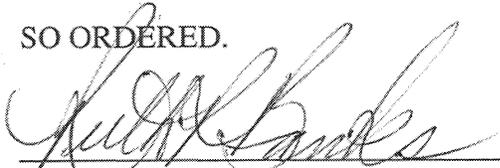
Since the Housing Provider did not appear at the hearing after delivery of the hearing notice, and there was no appeal on that issue, the Commission must determine whether the Housing Provider met his burden to set aside a default judgment based on his failure to appear for the hearing in TP 27,809. The four factors for the Commission to consider are: 1) notice of the hearing, 2) good faith, 3) prompt action, and 4) presentation of a defense to the tenant petition. See Radwan v. District of Columbia Rental Hous. Comm’n, 683 A.2d 478 (D.C. 1996); 14 DCMR § 4017.1 (1991).

In the instant appeal, on factor one (1), the decision stated that the Housing Provider received notice of the hearing. Decision at 1. The tenants stated in their petitions and motion that the housing Provider does not show for appointments, and therefore, the Commission concludes that the failure of the Housing Provider to appear at the hearing is consistent with the Housing Provider’s failure to keep appointments. The Commission

holds the Housing Provider had notice of the hearing and willfully failed to appear. Factor one (1) on notice is against the Housing Provider, because he ignored the notice. Since the Housing Provider failed to appear after delivery of the notice of hearing, the Commission concludes the Housing Provider lacked good faith, factor two (2). However, the Housing Provider timely appealed to the Commission within ten (10) days, and therefore met factor three (3) to take prompt action. Finally, the Housing Provider met factor four (4) when he presented in the opposition to the motion to dismiss that he had the defense of res judicata. The Commission reviewed the text of the two petitions and concluded that the allegations handwritten in the petitions were identical. See quoted text of the two petitions, supra. Therefore, the Housing Provider has raised the res judicata defense, which is supported by the certified record.

When balancing the conduct of the parties, the record shows the Tenants failed to file a motion for reconsideration or appeal the dismissal with prejudice in TP 27,493, and the Housing Provider met two of the four factors in the Radwan test for setting aside a default judgment. Under these circumstances, the Commission reverses the hearing examiner, and remands with instructions to dismiss TP 27,809, because of the dismissal with prejudice of TP 27,493, which precludes this subsequent adjudication of TP 27,809.

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON

MOTION 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

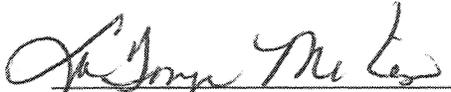
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing ORDER ON MOTION TO DISMISS in TP 27,809 was mailed by priority mail, with confirmation of delivery, postage prepaid this 12th day of December, 2003, to:

Jean Mooskin
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