

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,859

In re: 2204 Prout Street, S.E., Units 1, 3, 4

Ward Eight (8)

SILVANIA GARCES
SHIRLENE MASSEY
SANTRESA SMITH
Tenants/Appellants

v.

NOLAN GRAVES/NO GRAVES PROPERTIES
VALTRICE PARKER
Housing Providers/Appellees

ORDER ON MOTION FOR RECONSIDERATION

November 1, 2005

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 (2004), govern the proceedings.

I. THE PROCEDURES

On May 22, 2003, Shirlene Masey, Santresa Smith, and Sylvania Graces, Tenants, filed Tenant Petition (TP) 27,859 in the Housing Regulation Administration (HRA). On January 24, 2004, the hearing examiner issued the decision and order. On March 11,

2004, the Tenants filed a notice of appeal in the Commission. On September 28, 2005, the Commission issued a decision and order which stated:

Hearing Examiner Carl Bradford held the hearing on September 8, 2003 and he issued the decision and order on January 23, 2004, with notice to the parties to file motions for reconsideration and appeals no later than February 11, 2004. On February 11, 2004, Robert Cooper, counsel for the Tenants, filed a motion for reconsideration of the decision. The certified record contains an order dated February 27, 2004, denying the motion for reconsideration filed by counsel for the Tenants. Pursuant to the Rent Administrator's rule, 14 DCMR § 4013.2 & .5 (2004), the motion for reconsideration must be "granted or denied in writing by the hearing examiner within ten (10) days after receipt..." or the "[f]ailure of a hearing examiner to act on a motion for reconsideration within the time limit prescribed by § 4013.2 shall constitute a denial of the motion for reconsideration." The ten (10) day period expired on February 26, 2004, one day before the hearing examiner issued the order denying the motion for reconsideration. Record (R.) at 110. At this point the motion was denied twice, once by operation of law and second by order of the hearing examiner.

On March 8, 2004, the hearing examiner issued an amended order on reconsideration of the original order denying reconsideration dated February 27, 2004. There is no motion in the certified file that requested the hearing examiner to amend his original order on reconsideration.¹ On the next day, March 9, 2004, the hearing examiner issued an amended decision and order. It stated notices of appeal should be filed no later than March 26, 2004. Two days later, on March 11, 2004, counsel for the Tenants filed a notice of appeal in the Commission. This was ten (10) business days from February 26, 2004, when the motion was denied by operation of law. The notice of appeal stated it was an appeal from the decision and order issued on January 23, 2004, rather than the amended decision and order issued on March 9, 2004.

Decision at 1-3.

In this appeal, the thirteen (13) business day time period for filing a notice of appeal in the Commission, from the amended decision, commenced on March 10, 2004, which was the first business day after the Rent Administrator's amended decision was issued on March 9, 2004. The thirteen (13) business day period provided in rules, 14 DCMR § 3802.2-.3 (2004), expired on March 26, 2004, as stated in the amended

¹ The Rent Administrator's rule, 14 DCMR § 4013.3, states, "[t]he denial of a motion for reconsideration shall not be subject to reconsideration or appeal."

decision. The Commission's record does not contain a notice of appeal from the amended decision and order.

Decision at 6.

In this appeal, the amended decision and order was dated March 9, 2004, and stated that notices of appeal were to be filed no later than March 26, 2004. Therefore, the Commission does not have jurisdiction of the notice of appeal dated March 11, 2004, which states, "[t]he Tenant Petitioners below herein submit this Notice of Appeal of the Original Decision and Order of the Hearing Examiner, and refer the Commission to the January 23rd Order as well as the February 27, 2004 Order on Reconsideration." The Commission concludes that it is clear from the quoted text that the Tenants did not file a notice of appeal from the amended decision and order dated March 9, 2004. Therefore, the Commission lacks jurisdiction over the Tenants' March 11, 2004 notice of appeal from the decision and order issued January 23, 2004, which was filed during the time period stated on the March 9, 2004 decision and order for the filing of notices of appeal before March 26, 2004. See Amended Decision at 19. Accordingly, the Tenants' notice of appeal is DISMISSED.

Decision at 7.

On October 12, 2005, counsel for the Tenants filed a motion for reconsideration of the Commission's September 28, 2005 decision and order quoted above. The motion raised the issue whether the Commission erred in its decision, when it dismissed the tenants' appeal, because the Tenants' notice of appeal was not from the amended decision and order issued on March 9, 2004, which was two days before the initial appeal period expired on March 11, 2004, and that date included the appeal period after the denial of the motion for reconsideration.

The chronology of filings and appeal dates before the Rent Administrator follow. The hearing examiner's decision issued on January 23, 2004. It stated that appeals or motions for reconsideration must be filed no later than February 11, 2004. The Tenants filed a motion for reconsideration on February 11, 2004, and it was deemed denied by

operation of law on February 26, 2004, pursuant to 14 DCMR § 4013.5 (2004). The ten (10) business day period to appeal to the Commission, after denial of the motion for reconsideration, began on February 27, 2004 and expired on March 11, 2004, when the decision became final, pursuant to 14 DCMR §§ 3802.2 & 4013.6 (2004).

The second appeal period was the result of the amended decision issued on March 9, 2004, and that ten (10) business day appeal period expired on March 26, 2004.

Therefore, the Tenants' argued in their second motion for reconsideration filed with the Commission that the hearing examiner had no jurisdiction to issue the amended order on March 8, 2004 or amended decision and order on March 9, 2004, which was after the Tenants' motion for reconsideration filed on February 11, 2004 was deemed denied by law on February 26, 2004. In other words, the Tenants did not count or rely on the amended decision and order issued on March 9, 2004, with the ten (10) business day appeal period that expired on March 26, 2004.

The Court in Askin v. District of Columbia Rental Hous. Comm'n, 521 A.2d 669 (1987) was faced with a similar fact pattern in one of the Commission's appeals. There the Commission issued a decision and Mr. Askin filed a motion for reconsideration. The Commission had 15 days to act under former rule 14 DCMR § 3320.6 (1983).² The Commission did not timely act and the motion for reconsideration was deemed denied. However, nine (9) calendar days later the Commission issued a "formal order" which denied the motion. Id. at 674. The court held that the written order was controlling when considering the court's Rule 15(c), related to the time to file an appeal in the court from a decision of the Commission Id. at 675. The court further stated:

² The current rule, 14 DCMR § 3823.3 (2004), also provides that the Commission has 15 days to decide a motion for reconsideration or enlarge the time to grant or deny the motion.

[W]here a formal order arrives before the period to appeal the 'automatic denial' has expired, the later order should be the 'date of the order denying said petition,'

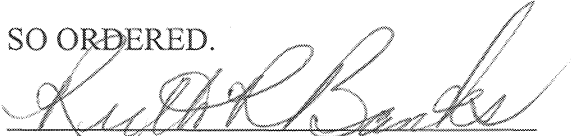
We [] resolve the ambiguity, here created by the possibility that two 'orders' exist denying the motion for reconsideration, by holding that the written order, at least when it arrives during the period when a petitioner can still appeal the 'automatic denial', fixes the time for the appeal period to run. (emphasis added).

Id. at 675.

In the instant appeal, the first motion for reconsideration, which was filed with the hearing examiner on February 11, 2004, was automatically denied, without a written order, ten business days later on February 26, 2004. The first appeal period to the Commission ran from February 27 to March 11, 2004, pursuant to 14 DCMR § 4013.6 (2004). During the appeal period, on March 8, 2004, the hearing examiner issued the amended order, which denied the motion for reconsideration in writing. On March 9, 2004, the hearing examiner issued the amended decision and order. Both the amended order and amended decision were issued within the original time period for appeal to the Commission by March 11, 2004. That is, within ten (10) business days after February 26, 2004. Since there was no appeal to the Commission from the amended order or amended decision and order, the Commission applied the law from Askin, holding that the written order, when it arrives during the initial appeal period, fixes the time for the appeal period to run. Accordingly, the Commission dismissed the Tenant's appeal from the first decision issued on January 23, 2004, in its September 28, 2005 decision, because

the appeal was not from the written amended order on reconsideration or amended decision issued on March 8 and 9, 2004, respectively. Therefore, the motion for reconsideration before the Commission is denied.

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON


RONALD A. YOUNG, COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in TP 27,859 was mailed by priority mail, with confirmation of delivery, postage prepaid this 1st day of November 2005, to:

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