

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,863

In re: 152 Bryant Street, N.W., Upper Unit

Ward Five (5)

KINDRA BEAMON
Tenant/Appellant

v.

GARY SMITH
Housing Provider/Appellee

DECISION AND ORDER

July 1, 2005

PER CURIAM. This case is on appeal to the Rental Housing Commission (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

Kindra Beamon, tenant, filed Tenant Petition (TP) 27,863 on May 28, 2003. In the petition, the tenant alleged that: 1) The building in which the tenant's rental unit is located is not properly registered with the Rental Accommodations and Conversion Division; 2) services and/or facilities provided in connection with the rental unit have

been substantially reduced; and 3) a Notice to Vacate has been served on the tenant which violates the requirements of § 501 of the Act.

An RACD hearing was held on July 23, 2003 with Hearing Examiner Sandra M. McNair presiding. On December 16, 2003, the hearing examiner issued her decision and order. The decision and order contained the following:

Findings of Fact:

1. The subject property is a single-family residential dwelling located at 152 Bryant Street, N.W., Washington, D.C. 20001
2. Kindra [Beamon] has resided at the subject property since June 1, 1993 and is the Petitioner in this matter.
3. Gary W. Smith owns the subject property and is the Respondent in this matter.
4. The Respondent filed a RACD Registration/Claim of Exemption Form for the subject property on May 30, 2003 and received an exemption from rent control based on ownership of four or fewer rental units.
5. The Respondent inherited the subject property in probate from his parents. It is the only rental property the Respondent owns.
6. The Respondent failed to file a claim of exemption with RACD prior to May 28, 2003 or as of June 1, 1993 the date the Petitioner began her tenancy at the subject premises.
7. The Respondent is not a real estate specialist or professional and is not otherwise engaged in the business of real estate in the District of Columbia. The Respondent is not engaged in the rental housing business.
8. The Respondent only owns the subject rental property and no other residential rental property in the District of Columbia. He does not employ real estate professionals to manage the subject property, as he manages the home himself. The Respondent is not a landlord regularly.
9. The Respondent is not versed in real estate or rent control matters or otherwise experienced as a real estate professional. The Respondent filed the claim of exemptions [sic] after being advised to do so upon

receiving a copy of TP 27,863. The Respondent did not know and had no reason to know of the rent control laws and the registration requirement for his rental property. The Respondent was reasonably unaware of the requirement to file a claim of exemption with the RACD at the time the Petitioner's tenancy commenced on June 1, 1993.

10. The Petitioner's rent charged was \$500.00 per month and did not increase during the entire tenancy. Furthermore, the Petitioner reduced her rent payment to \$400.00 per month, based on the cancelled checks[.] ... The \$500.00 monthly rent for Petitioner's rental unit does not exceed the market rate for the rental of the entire house. The Petitioner did not complain to the Respondent or testify at the hearing that the \$500.00 monthly rent was above fair market rent value for her unit.
11. On May 20, 2003, the Respondent attempted to enter into the Petitioner's unit, after providing her with a 5 day written notice that the real estate agent and contractors were coming to inspect the property for the purpose of selling the housing accommodation. The inspection was to take place on May 28, 2003.
12. The Respondent either personally, or through his real estate agent, provided the Petitioner with an "Offer of Sale and Tenant Opportunity to Purchase with Third Party Contract" on May 1, 2003, thus notifying the Petitioner of Respondent's intent to sell the subject property.
13. The subject housing accommodation, 152 Bryant Street, N.W., Washington, D.C. 20001, is properly registered with the RACD.
14. The subject housing accommodation, 152 Bryant Street, N.W., Washington, D.C. 20001, is exempt from the provisions of Title II of the Act.
15. The Examiner lacks the jurisdiction to consider matters involving property that has been determined to be exempt from the provisions of Title II of the Act.
16. The Examiner is barred from considering any matters pertaining to rent increases, rent charged, and rent ceilings, and reduction of services or facilities with respect to the subject property, in that the property is exempt from Title II of the Act.
17. All other findings of [f]act made by the Examiner in this Decision and Order are incorporated by reference in this section of Findings of Fact.

Conclusions of Law:

1. The Petitioner has failed to prove by a preponderance of the evidence that the housing accommodation in which she resides is not properly registered with the Rental Accommodations and Conversion Division, in violation of D.C. OFFICIAL CODE § 42-3502.05(f) (2001).
2. The Respondent owns and operates four or fewer [units] as rental units in the District of Columbia, and thereby qualifies for the “small landlord” exemption, pursuant to D.C. OFFICIAL CODE § 42-3502.05(a)(3) (2001), for the property located at 152 Bryant Street, N.W., Washington, D.C. 20001. The Respondent’s “small landlord” exemption was perfected by a RACD Registration/Claim of Exemption Form, date-stamped May 30, 2003, and Exemption number 532590.
3. The Respondent’s filing of the Claim of Exemption on May 30, 2003, after Petitioner’s tenancy began on June 1, 1993, is excused based on proof that “special circumstances” existed, namely, that the Respondent: 1. was not a real estate professional; 2. was not a landlord regularly; 3. was reasonably unaware of the requirement of filing a claim of exemption; and 4. that the rent charged was reasonable, as set forth in *Hanson v. District of Columbia Rental Housing Comm’n*, 584 A. 2d 592 (DC 1991) and later developed case law.
4. The Rent Administrator lacks the jurisdiction to adjudicate Petitioner’s Title II claims of reduction in services or facilities because the subject property is exempt from Title II of the Act, pursuant to D.C. OFFICIAL CODE § 42-3502.05(a) (2001) and *Madison v. Clifton Terrace Ass’n Ltd.*, TP 11,318 (RHC April 22, 1985).
5. All other conclusions of law made by the Examiner in this Decision and Order are incorporated by reference into this section of Conclusions of Law.

Id. at 14–15.

On January 7, 2004, the tenant filed a notice of appeal with the Commission. A Commission hearing was held on January 25, 2005.

II. THE ISSUES

The tenant’s notice of appeal indicates the following issues:

- A. Whether the hearing examiner erred in concluding that the Rent Administrator lacks the jurisdiction to adjudicate Petitioner's Title II claims of reduction in services or facilities?
- B. Whether the hearing examiner erred in concluding that the subject property is exempt from Title II of the Act?
- C. Whether the hearing examiner erred in comparing the rental rate of the subject property to rental rates of houses in the same area?

Notice of Appeal at 1-2.

III. DISCUSSION OF THE ISSUES

- A. **Whether the hearing examiner erred in concluding that the Rent Administrator lacks jurisdiction to adjudicate Petitioner's Title II claims of reduction in services or facilities.**

The Rent Administrator has jurisdiction over complaints and petitions arising out of the Rent Stabilization Program. D.C. OFFICIAL CODE § 42-3502.04(c) (2001). Under the Act, a person who becomes the housing provider of a rental unit has 30 days to file a registration statement for the housing accommodation with RACD. D.C. OFFICIAL CODE § 42-3502.05(f) (2001). Because this requirement falls under the Rent Stabilization Program, the Rent Administrator has jurisdiction over complaints and petitions relating to it. However, housing providers who meet certain criteria are exempt from the rent stabilization requirements of the Act pursuant to § 42.3502.05(a).¹ Therefore, the Rent

¹ Section 42-3502.05(a)(3) provides an exemption for:

Any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 rental units whether within the same structure or not, provided:

- (A) The housing accommodation is owned by not more than 4 natural persons;
- (B) None of the housing providers has an interest, either directly or indirectly, in any other rental unit in the District of Columbia;
- (C) The housing provider of the housing accommodation files with the Rent Administrator a claim of exemption statement which consists of an oath or affirmation by the housing provider of the valid claim to the exemption. The claim of exemption statement shall also contain the signatures of each person having an interest, direct or indirect, in the housing accommodation. Any change in the ownership of the exempted housing accommodation or change in the housing provider's interest in any other housing accommodation which would invalidate the exemption claim must be reported in writing to the Rent Administrator within 30 days of the change;

Administrator has jurisdiction to hear complaints and petitions regarding violations of the Act, unless the housing provider is exempt from the rent stabilization provisions of the Act under § 42-3502.05(a).

In the instant case, the tenant complained about a reduction in services or facilities related to the rental of her unit. Tenant Petition at 4. Such actions on the part of the housing provider are punishable under the Act by penalties pursuant to § 42-3509.01, thereby giving the Rent Administrator jurisdiction over the complaint because it falls within the Rent Stabilization Program. However, jurisdiction must be evaluated with respect to whether or not the housing provider in the instant case is exempt under § 42-3502.05(a) of the Act.

The evidence in the record reflects that the housing provider is the sole owner of the subject property and has been the sole owner since the year 2000; that the housing provider owns four or fewer rental units, and does not own or have an interest in any other rental unit in the District of Columbia; that the property is not owned or controlled by an estate or trust; and, that the subject property is not a condominium unit. These un rebutted facts satisfy the requirements of subsections A, B, D, and E of § 42-3502.05(a)(3), respectively. Subsection C of § 42-3502.05(a)(3) requires that the housing provider file a claim of exemption with the Rent Administrator. While the failure to file a claim of exemption form violates § 42-3502.05(a)(3)(C), case law has provided “special

(D) The limitation of the exemption to a housing accommodation owned by natural persons shall not apply to a housing accommodation owned or controlled by a decedent's estate or testamentary trust if the housing accommodation was, at the time of the decedent's death, already exempt under the terms of paragraphs (3)(A) and (3)(B) of this subsection; and

(E) For purposes of determining the eligibility of a condominium rental unit for the exemption provided by this paragraph, by § 42-3404.13(a)(3), or by § 42-4016(a)(3), a housing accommodation shall be the aggregate of the condominium rental units and any other rental units owned by the natural person(s) claiming the exemption.

circumstances” under which a § 42-3502.05(a)(3) exemption² may still be valid, even if the housing provider has not filed the proper Registration/Claim of Exemption Form with the Rent Administrator.

The Commission has held that “a landlord ... should not be penalized [for failing to file a claim of exemption] if he can establish to the satisfaction of the Examiner that he is not a landlord regularly and that he was reasonably unaware of the requirement of filing a claim of exemption.” Gibbons v. Hanes, TP 11,076 (RHC July 11, 1984) at 3. Since the Commission’s decision in Gibbons, the District of Columbia Court of Appeals (DCCA) has expanded the requirements of “special circumstances” to include a showing that the rent charged was reasonable. Boer v. District of Columbia Rental Hous. Comm’n, 564 A.2d 54, 57 (D.C. 1989). Furthermore, the DCCA has also included a showing that the housing provider is not a real estate professional in the requirements of “special circumstances.” Hanson v. District of Columbia Rental Hous. Comm’n, 584 A.2d 592, 597 (D.C. 1991).

The record evidence in the instant case reflects that the housing provider does not work in the real estate profession, and he does not own any other rental units in the District of Columbia. The record evidence also reflects that the housing provider had no reason to know of the registration requirement, because he is not engaged in the business of real estate, and he does not employ a real estate professional to manage his property. Lastly, the record reflects that the tenant was charged a \$500.00 monthly rent from June 1993 through May 2003 without an increase. Even if the monthly rent was not reasonable at the commencement of the lease, the fact that there was no increase in

² Also commonly known as a “small landlord” exemption.

monthly rent over the subsequent 10 years indicates that the rent was reasonable when the tenant filed her petition. Additionally, the hearing examiner held that because \$1500.00 to \$2000.00 was a reasonable rent for homes in the same area, “\$500.00 is more than reasonable for the rental of the entire home.”³ Beamon v. Smith, TP 27,863 (RACD Dec. 16, 2003) at 13.

Based on the hearing examiner’s finding that the housing provider was not a real estate professional, was not a landlord regularly, was reasonably unaware of the registration requirement, and charged a reasonable rent, the housing provider met the “special circumstances” criteria in order to be exempt from the rent stabilization provisions of the Act notwithstanding his failure to file a claim of exemption. See Gibbons, Boer, and Hanson. Therefore, the hearing examiner did not err in concluding that the Rent Administrator lacked the jurisdiction to adjudicate Petitioner’s Title II claims of reduction in services or facilities. This appeal issue is accordingly denied.

B. Whether the hearing examiner erred in concluding that the subject property is exempt from Title II of the Act.

As stated above, under the Act, a person who becomes the housing provider of a rental unit has 30 days to file a registration statement for the property with the Rent Administrator. D.C. OFFICIAL CODE § 42-3502.05(f) (2001). However, exemptions from the requirements of the rent stabilization provisions of the Act can be granted to housing providers who meet the criteria of § 42-3502.05(a).

The housing provider in the instant case meets the “small landlord” exemption requirements as set forth in § 42-3502.05(a)(3) even though he failed to file a claim of exemption for the property. See discussion, supra, Part III. A. Therefore, the

³ See discussion infra Part III C.

Commission affirms the hearing examiner's conclusion that the housing provider is exempt from the requirements of the rent stabilization provisions of the Act, and this appeal issue is denied.

C. **Whether the hearing examiner erred in comparing the rental rate of the subject property to rental rates of houses in the same area.**

The hearing examiner held that since \$1500.00 to \$2000.00 per month was a reasonable rent for homes in the same area as the subject housing accommodation, "\$500.00 is more than reasonable for the rental of the entire home." Beamon v. Smith, TP 27,863 (RACD Dec. 16, 2003) at 13. The tenant appeals this finding because she does not occupy the entire house as the hearing examiner's decision indicates; instead, the tenant argues on appeal, she only occupies one unit within the house. Notice of Appeal at 2. The record reflects that there was indeed another rental unit in the basement of the housing accommodation. Even though the unit was vacant, the record reflects that the tenant did not have access to the basement unit. Essentially, the evidence of record shows that the tenant did not rent the entire house, but the first and second floors of a single-family home. Therefore, the hearing examiner's comparison of the rent to other reasonable rents in the area for an entire house including the basement was error.

However, the hearing examiner's error was harmless error.⁴ The evidence of record contains a copy of the original lease stating that the tenant rents the first and second floors of the house. While \$1500.00 to \$2000.00 is the rental rate for similar homes that include a basement, \$500.00 is significantly lower than this rate. Therefore,

⁴ Harmless error is "an error which is trivial or formal or merely academic and was not prejudicial to the substantial rights of the party assigning it, and in no way affected the final outcome of the case." BLACK'S LAW DICTIONARY 646 (5th ed. 1975); State v. Johnson, 463 P.2d 205, 206.

notwithstanding the hearing examiner's error in comparable rental rates, the \$500.00 monthly rent is still reasonable for two of three stories of a single-family house.

Further, the hearing examiner's comparison of fair market rental value was not the sole basis upon which the hearing examiner found that the rent charged was reasonable, (the fourth element of the "special circumstances" exception). The hearing examiner also held that the tenant never raised the issue that the rent charged was improper, and that the housing provider never raised the monthly rent over a 10-year period even though the tenant habitually failed to pay the full amount of rent or any rent at all. Beamon v. Smith, TP 27,863 (RACD Dec. 16, 2003) at 12-13. Both of these facts are supported by the substantial evidence in the record.

While the hearing examiner erred in her comparison of comparable, reasonable rental rates, her conclusion that the \$500.00 monthly rent was reasonable is supported by the substantial evidence in the record. Therefore, the hearing examiner's comparison of the rent for a single-family house, excluding the basement, to other reasonable rents in the area for an entire single-family home was harmless error. Accordingly, we affirm the hearing examiner's conclusion that the rent charged for the subject property was nonetheless reasonable.

IV. CONCLUSION

The hearing examiner did not err in concluding that the Rent Administrator lacked jurisdiction to adjudicate the tenant's Title II claims of reduction in services or facilities. This appeal issue is accordingly denied. The Commission affirms the hearing examiner's decision that the housing provider meets the "small landlord" exemption requirements as set forth in § 42-3502.05(a)(3) of the Act. Therefore, the housing provider is exempt

from the requirements of the rent stabilization provisions of the Act, and this appeal issue is denied. Finally, while the hearing examiner's comparison of the rent to other reasonable rents in the area for an entire single-family house was error, her finding that the monthly rent was reasonable is affirmed.

SO ORDERED.


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 issues 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

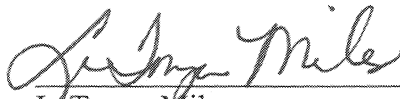
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Decision and Order in TP 27,863 was mailed by priority mail with delivery confirmation, postage prepaid, this 1st day of **July** 2005, to:

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