

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,938

In re: 3517 13th Street, N.W., Unit 3

Ward One (1)

LAURANNE WINGARD
EVAN McANNEY
Tenants/Appellants

v.

LAURENCE SMITH
Housing Provider/Appellee

DECISION AND ORDER

May 3, 2007

YOUNG, CHAIRMAN. This matter is on appeal from the Department of Consumer and Regulatory Affairs (DCRA), Housing Regulation Administration (HRA), Rental Accommodations and Conversion Division (RACD), to the Rental Housing Commission (Commission). 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 (DCMR), 14 DCMR §§ 3800-4399 (2004), govern the proceedings.

I. PROCEDURAL HISTORY

On August 26, 2003, Lauranne Wingard and Evan McAnney, the tenants of unit 3 of the housing accommodation located at 3517 13th Street, N.W., filed Tenant Petition (TP) 27,938. In their petition, the tenants alleged: 1) That the rent being charged exceeded the legally calculated rent ceiling for their units; 2) that services and/or

facilities provided in connection with the rental of their unit(s) have been substantially reduced; 3) that retaliatory action has been directed against them by their Housing Provider, manager or other agent for exercising their rights in violation of section 502 of the Rental Housing Emergency Act of 1985.

Hearing Examiner, Keith Anderson, convened the RACD hearing in TP 27,938 on January 5, 2004. The tenants were present at the hearing; however, the housing provider, Laurence Smith failed to appear at the hearing either personally or through counsel. The hearing examiner issued his decision on February 27, 2004. In his decision, the hearing examiner concluded as a matter of law:

2. Petitioner provided a preponderance of evidence of the nature, duration and value of the reduced related repair services, and whether they had been restored and revealed to Respondent, in compliance with 14 DCMR Sect. 4003 (1991).
3. Pursuant to Sect. 901(a) of the Act, DC OFFICIAL CODE Sect. 42-3509 (a) (2001), Petitioner is entitled to a rent refund of \$3,740.00 plus \$102 interest for rent paid in excess of the reduced rent ceiling based on Respondent's violation of Sect. 211 of the Act, as set forth in the Evaluation and Analysis of Evidence, Remedies, and Computation of Refund sections above.
4. All other conclusions of law made by the Examiner in this Decision and Order are incorporated by reference herein.

Wingard v. Smith, TP 27,938 (RACD Feb. 27, 2004) at 10.

The housing provider filed a Notice of Appeal with the Commission on March 17, 2004. In his Notice of Appeal the housing provider raised five (5) issues as follows:

1. Respondent did not receive notice of hearing in the matter and consequently could not attend.
2. Respondent disputes the findings made by the hearing examiner.
3. The Respondent contest [sic] the issues raised by the Petitioner[s] and

demand [sic] an opportunity to put evidence [sic] to clear the Housing Provider

4. Respondent request [sic] an opportunity to be heard and to be represented by counsel [sic]
5. Therefore Respondent respectfully request[s] that the decision and order be stayed pending a hearing on the merit[s].

Notice of Appeal at 1.

On September 30, 2004, the Commission reversed the Rent Administrator's February 27, 2004 Decision and Order based on a preliminary issue, that is, whether the housing provider was properly served with notice of the RACD hearing. The Commission determined that the RACD certified record failed to show proof of delivery of the mailed notice of the hearing to the housing provider by a form of service that assured delivery as required by the Act and the DCAPA. See Joyce v. District of Columbia Rental Hous. Comm'n, 741 A.2d 24 (D.C. 1999). The Commission therefore reversed the Rent Administrator's February 27, 2004 decision and remanded the case to the Rent Administrator for a hearing de novo. Smith v. Wingard, TP 27,938 (RHC Sept. 24, 2004).

A new hearing on the petition was scheduled for December 9, 2004; however, on that date counsel for the housing provider and the tenants signed a praecipe continuing the hearing to January 26, 2005. On January 26, 2005 counsel for the housing provider and the tenants signed a praecipe continuing the hearing to February 10, 2005. On February 10, 2005 counsel for the tenant submitted a consent motion for continuance requesting that the RACD hearing be continued until March 2, 2005. On April 15, 2005, RACD notified the parties that a hearing on the petition would be held on May 11, 2005. On May 11, 2005, the housing provider and his counsel appeared, however, the hearing

was again continued to June 15, 2005. On June 13, 2005, Mr. McAnney requested by letter that the hearing be continued to an undetermined date. Also on June 13, 2005 counsel for the tenant submitted a Notice of Withdrawal, "due to a breakdown in the attorney client relationship," and a Motion to Continue Hearing. The tenant's counsel was instructed to attend the June 15, 2005, de novo hearing, because the motions for continuance submitted by counsel and the tenant were untimely. See 14 DCMR § 4008.6 (2004).¹

Hearing Examiner Saundra McNair convened the de novo hearing on June 15, 2005. As a preliminary matter, the hearing examiner heard argument from counsel for the tenant on her Notice of Withdrawal and untimely filed Motion for Continuance. After hearing argument from counsel for both parties, the record (tape) of the hearing reflects that the hearing examiner verbally granted the motion to withdraw submitted by counsel for Mr. McAnney. The hearing examiner also granted counsel's motion for continuance for the stated reason of permitting the tenant an opportunity to seek new counsel.

After granting the continuance, but prior to concluding the hearing, Examiner McNair instructed Mr. McAnney that he would receive no further continuances. The record (tape) of the hearing reflects that Mr. McAnney approached the hearing examiner and was told to take his seat. Mr. McAnney responded, "I do not take orders from you." After several requests to take his seat went unheeded, the hearing examiner stated on the

¹ The regulation, 14 DCMR § 4008.6 (2004), provides:

A party may file a motion to continue or reschedule a hearing for good cause with the hearing examiner provided the motion is served on opposing parties and the hearing examiner at least five (5) days before the hearing; however, in extraordinary circumstances, the time limit may be shortened by the hearing examiner.

record that she would dismiss his case if he did not comply with her order. Mr.

McAnney then instructed the hearing examiner to dismiss his case.

II. ISSUES ON APPEAL

Mr. McAnney filed a timely notice of appeal in the Commission. In his notice of appeal the tenant argued:

First, the Hearing Examiner erred first granting, then withdrawing the continuance request, of a motion to withdraw and continue case filed by former counsel of Appellant/Petitioner.

Second, the Hearing Examiner erred in failing to accommodate Mr. McAnney's mental disability

Third, the Hearing Examiner erred in precluding, without any apparent authority to do so, Appellant/Petitioner's right to engage in the hearing and post-hearing process.

Fourth, the Hearing Examiner erred in failing to rule on a pre-hearing motion filed by Appellant/Petitioner.

Fifth, Petitioner/Appellant received ineffective representation [sic] of counsel.

Notice of Appeal at 1-2.

III. DISCUSSION OF THE ISSUES

A. Whether the hearing examiner erred when she granted, then withdrew her ruling on a motion to withdraw and continue the hearing filed by former counsel of Appellant/Petitioner.

Tenant McAnney argues that the hearing examiner first granted and then denied a motion for continuance untimely filed by his counsel. The record reflects that counsel for the tenant filed a motion to withdraw as counsel and a motion to continue the June 15, 2005 proceeding. The record further reflects that both motions were untimely filed, two days before the June 15, 2005 hearing instead of the five (5) days before the hearing as is required by the regulations.

At the commencement of the hearing, after considering the counsel's argument, Examiner McNair orally granted counsel's motion for withdrawal and her motion for continuance of the June 15, 2005 hearing as a preliminary matter. The Examiner stated, "in light of your belief that the relationship cannot be restored and the fact that there is no opposition to your request to withdraw, I will grant your request to withdraw as counsel." Record (R.) Audio Tape, June 15, 2005. The record further establishes the hearing examiner granted the continuance, but stated for the record the conditions under which the continuance would be granted, including no further delays or grants of continuance for the tenants. It was at that point that Mr. McAnney became contumacious and hostile toward the Examiner. When ordered not to approach the Examiner, to maintain his distance from the Examiner and to take his seat, he refused to obey the orders.

The record shows that the hearing examiner dismissed Mr. McAnney as a party in the proceedings regarding TP 27,938 because of his failure to follow the Examiner's orders. The record reflects that the Examiner did not rescind the continuance, rather she continued the hearing to permit the co-tenant on the petition, Lauranne Wingard an opportunity to reschedule the hearing at a time convenient to her. Accordingly, this appeal issue is dismissed.

B. Whether the Hearing Examiner erred when she failed to accommodate Mr. McAnney's mental disability.

Tenant McAnney argues that the hearing examiner failed to accommodate his mental disability. The Commission notes that Mr. McAnney neither discussed his mental disability in the original tenant petition, nor did he assert that he had a mental disability during any phase of the processing of his tenant petition. At the June 15, 2005 hearing, Mr. McAnney's counsel did not cite his mental disability as her reason for wishing to

withdraw as counsel or as a reason that a continuance should have been granted. The record reflects that Examiner McNair had no reason to suspect that Mr. McAnney suffered from a mental disability. Therefore, the hearing examiner did not err in failing to accommodate the tenant's purported mental disability but instead continued the hearing for the specific purpose of allowing the tenant to seek counsel. Accordingly, this appeal issue is dismissed.

C. Whether the hearing examiner erred when she precluded, without apparent authority to do so, Appellant McAnney's right to engage in the hearing and post hearing process.

Tenant McAnney argues that the hearing examiner erred when she acted without authority to dismiss his claims in TP 27,938. In her August 4, 2005 decision and order the hearing examiner stated:

After much thought and deliberation on the potential for prejudice, the Examiner granted Petitioner McAnney's counsel's request to withdraw and to continue the matter to allow Petitioner McAnney time to secure new counsel. After so doing, and giving instruction to Petitioner McAnney that he needed to move expeditiously to secure counsel, Petitioner McAnney became extremely disrespectful and belligerent toward the Examiner. Petitioner McAnney's behavior was threatening toward the Examiner. The Examiner, on several occasions, instructed Petitioner McAnney to have a seat. Petitioner McAnney ignored the Examiner's instruction and emphatically stated, "I do not take orders from you." The Examiner informed Petitioner McAnney if he did not take his seat, she would dismiss the case. Petitioner McAnney refused to follow the instruction of the Examiner and stated that he wanted the Examiner to dismiss his case. Upon having her fill of the contumacious, disrespectful, and belligerent behavior displayed by Petitioner McAnney, the Examiner dismissed the case as to Petitioner McAnney.

McAnney v. Smith, TP 27,938 (RACD Aug. 4, 2005) at 2-3.

The Rent Administrator's rules are silent on the dismissal of appeals for failure to obey an order of a hearing examiner. However, pursuant to the rules the hearing

examiner was permitted to apply the applicable rules of civil procedure published and followed by the Superior Court of the District of Columbia. The rule states:

When these rules are silent on a procedural issue before the Rent Administrator, such issue shall be decided by using as guidance the current rules of civil procedure published and followed by the Superior Court of the District of Columbia.

14 DCMR § 4018.1 (2004). Therefore, the hearing examiner was permitted to apply the rules of the Superior Court of the District of Columbia. Specifically, the hearing examiner was permitted to apply Superior Court Rule (Sup. Ct. R.) 37, which provides in relevant part:

(b) Failure to Comply With Order

(2) Sanctions by This Court.

[I]f a party fails to obey an order ... the Court may make such orders in regard to the failure as are just, and among others the following:

...
(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or part thereof, or rendering a judgment by default against the disobedient party.

In Mullin v. N Street Follies Ltd. P'ship, 712 A.2d 487 (D.C. 1998), the

DCCA stated:

It is well settled that where a tenant fails to comply with a[n] ... order, the trial court may strike the tenant's pleadings and enter judgment for the landlord. This is 'an appropriate sanction for a trial court to impose in the exercise of its equity power when the tenant has neither abided by the terms of the order nor sought to modify such order.

Id. at 493. Accordingly, where the tenant refused to comply with her order, the hearing examiner had the authority, pursuant to Sup. Ct. R. 37 (b)(2)(C) and the DCCA's decision in Mullin to dismiss the tenant's petition.

The standard of review applied by the Commission in a decision issued by the Rent Administrator is stated in D.C. OFFICIAL CODE § 42-3502.16(h) (2001), which provides:

The Rental Housing Commission may reverse, in whole or in part, any decision of the Rent Administrator which it finds to be arbitrary, capricious, an abuse of discretion, not in accordance with the provisions of this chapter, or unsupported by substantial evidence on the record of the proceedings before the Rent Administrator, or it may affirm, in whole or in part, the Rent Administrator's decision.

In her decision dismissing the tenant from TP 27,938, the hearing examiner cited neither Sup. Ct. R. 37 (b)(2)(C), nor the DCCA decision in Mullin, supra. However, the Commission determines that the hearing examiner's actions were neither arbitrary, capricious, nor an abuse of discretion when she dismissed the tenant from the petition due to his failure to obey her order at the hearing.

Accordingly, the decision of the hearing examiner dismissing the tenant from TP 27,938 is affirmed and this appeal issue is denied.

D. Whether the Hearing Examiner erred when she failed to rule on a pre-hearing motion filed by Appellant/Petitioner.

The record reflects that counsel for the tenant filed a motion on June 13, 2005 seeking to withdraw as counsel, and a motion for continuance to permit Mr. McAnney the opportunity to seek new counsel. The record further reflects that Mr. McAnney also submitted an untimely request for a continuance. The hearing examiner considered the motion for continuance submitted by the tenant's counsel and granted counsel's motion, with the proviso that no further continuances would be granted the tenant. Presumably, the tenant's allegation concerns the hearing examiner's failure to rule on his untimely pre-hearing motion. However, the hearing examiner's consideration and grant of counsel's untimely motion for continuance made a ruling on the tenant's motion

unnecessary. Therefore, the hearing examiner did not err in failing to rule on the tenant's pre-hearing motion and this issue is dismissed.

E. [Whether] Petitioner/Appellant received ineffective representation of counsel.

The tenant argues that he received ineffective assistance from his counsel. The tenant raised the issue of ineffective assistance of counsel for the first time in his notice of appeal to the Commission. The Commission has previously held that it will not consider issues which were not raised at the RACD hearing. Davis v. Barac Co., TP 24,835 (RHC Oct. 27, 2000); Terrell v. Estrada, TP 20,007 (RHC May 30, 1991), citing Bealer v. District of Columbia Rental Hous. Comm'n, 472 A.2d 901, 903 (D.C. 1984). Accordingly, this issue, raised on appeal for the first time by the tenant on appeal, is dismissed.

IV. CONCLUSION

For the forgoing reasons, the Commission affirms the hearing examiner's August 25, 2005 decision and order dismissing tenant McAnney from TP 27,938. This case is remanded to the Office of Administrative Hearings,² to provide tenant Lauranne Wingard a de novo hearing on the issues raised in TP 27,938.

SO ORDERED


RONALD A. YOUNG, CHAIRMAN


DONATA L. EDWARDS, 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 may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk

² The Office of Administrative Hearings Establishment Act of 2001, D.C. OFFICIAL CODE § 2-1831.01 provides:

(a) Section 6(b-1) (D.C. Official Code § 2-1831.03(b-1)) is amended as follows:

....:

(1) In addition to those agencies listed in subsections (a) and (b) of this section, as of January 1, 2006, this chapter shall apply to adjudicated cases under the jurisdiction of the Rent Administrator in the Department of Consumer and Regulatory Affairs.

500 Indiana Avenue, N.W., 6th Floor
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

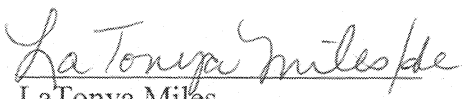
I certify that a copy of the foregoing Decision and Order in TP 27,938 was mailed by priority mail, with confirmation of delivery, postage prepaid this 3rd day of **May**, 2007, to:

Rebecca Lindhurst, Esquire
Bread for the City Legal Services
1525 7th Street, N.W.
Washington, DC 20001

Lauranne Wingard
7 Donna Circle
Pottsville, PA 17901

Evan McAnney
5415 Connecticut Avenue, N.W.
Unit 828
Washington, DC 20015

Vere Plummer, Esquire
1090 Vermont Avenue, N.W.
Suite 800
Washington, DC 20005


LaTonya Miles
Contact Representative
(202) 442-8949