DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,982

In re: 814 Southern Avenue, S.E., Unit 102

Ward Eight (8)

BEVERLY D. RUFFIN
Tenant/Appellant

v.

SHERMAN ARMS, LLC
Housing Provider/Appellee

DECISION AND ORDER

July 29, 2005

PER CURIAM. This case is on appeal from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), 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, 14 DCMR §§ 3800-4399 (1991), govern these proceedings.

I. PROCEDURAL HISTORY

On November 14, 2003, Beverly D. Ruffin, tenant, filed Tenant Petition (TP) 27,982 in the Housing Regulation Administration (HRA). In the petition she alleged that the housing provider, Sherman Arms, LLC: 1) demanded an unlawful rent for her unit; 2) failed to provide a proper notice of a rent increase; 3) failed to file the proper rent increase forms with the RACD; 4) filed an improper rent ceiling for her unit; 5) increased

rent when a written lease prohibiting such increases was in effect; 6) substantially and permanently reduced services and facilities in connection with her unit; and 7) directed retaliatory action against her. Hearing Examiner Carl Bradford heard the case on January 6, 2004, and issued the decision and order August 16, 2004. The decision and order contained the following:

Findings of Fact:

1. The subject housing accommodation, 814 Southern Ave., S.E., is managed by Sherman Arms, LLC.

2. Petitioner Beverly D. Ruffin resides at 814 Southern Ave., S.E., unit 102.

3. Respondent did not permanently eliminate services and facilities provided in connection with Petitioner's unit.

4. Respondent did not substantially reduce Petitioner's services and facilities while petitioner resided at 814 Southern Ave., S.E.

5. Respondent did increase rent to an amount larger than allowed by any applicable provision of the Rental Housing Act of 1985.

6. Respondent overcharged Petitioner $32.00 dollars a month for twenty months.

7. Respondent did not retaliate against Petitioner.

8. Respondent acted in bad faith when Respondent implemented an illegal General Applicability Increase.

9. Respondent shall refund to Petitioner $640.00 plus $25.00 in interest for a refund of $665.00. This amount shall be trebled because of bad faith.

10. Petitioner's monthly rent shall be rolled back to $678.00 a month.

11. The Examiner trebles the refund because the Respondent acted in back [sic] faith when it implemented the illegal General Applicability Increase.

Ruffin v. Sherman Arms, LLC., TP 27,983 (RACD Aug. 16, 2004) at 9.

Conclusions of Law:

1. Respondent did not reduce Petitioner's services/facilities in violation of D.C. Official Code § 42-3502.05(g) [sic] (2001).

2. Respondent did not permanently eliminate Petitioner's services and facilities in violation of D.C. Official Code § 42-3502.05(g) [sic] (2001).

3. Respondent acted in bad faith when they [sic] increased Petitioner's rent in violation of D.C. Official Code § 42-3509.01(a) (2001).

4. Respondent shall refund to Petitioner $640.00 plus $25.00 interest. This amount shall be trebled for a total refund of $1995.00 pursuant [to] D.C. Official Code § 42-3509.01(a) (2001).

5. Respondent increased Petitioner's monthly rent charged in violation [of] D.C. Official Code § 42-3502.06 (2002).

Id. at 10.

The tenant filed a Notice of Appeal (NOA) in the Commission on September 2, 2004. The Commission held its appellate hearing on November 16, 2004. At the Commission hearing, Jon Blake entered a Notice of Appearance on behalf of the tenant. After examination of Mr. Blake by the Commission regarding his qualifications for representation before the Commission, the Commission determined, pursuant to the provisions of 14 DCMR § 3812.5 (1991),[1] that Mr. Blake lacked the requisite qualifications to represent others before the Commission. See e.g., Brookens v. Committee on Unauthorized Practice of Law, 538 A.2d 1120 (D.C. 1988). Mr. Blake

[1] The applicable regulation, 14 DCMR § 3812.5 (1991), provides:

> The Commission my disqualify or deny, temporarily or permanently, the privilege of appearing or practicing before it or the Rent Administrator in any way, to any individual who is found by the Commission, after hearing, either to be lacking in the requisite qualifications to represent others or to have engaged in unethical, improper or unprofessional conduct; Provided, that any individual who shall willfully mislead the Commission or its staff by a false statement of fact or law shall be disqualified permanently.

could not adequately serve as a legal representative for another party, as he was not admitted to any bar, nor did he hold a law degree. During the hearing the tenant, Beverly D. Ruffin, presented an oral motion for a continuance in order to obtain counsel or prepare to represent herself before the Commission. The motion was granted by the Commission pursuant to 14 DCMR § 3815.1 (1991),[2] due to extraordinary circumstances and a showing of good cause. The rescheduled hearing took place on December 14, 2004.

II. THE ISSUES

The tenant raised the following issues in her notice of appeal:

A. Numerical Error -The actual duration of the overcharge for rent was more than the Order [which only] listed twenty-four months. All of the applicable years (2000, 2001, 2002 & 2003) were not addressed in the Decision and Order. Only the 2002 & 2003 years were calculated in the Decision and Order and the filed years of 2000 & 2001 were omitted. Again, evidence was submitted to substantiate the previous illegal General Applicability Increases. Thus, a recalculation of the ordered refund is being requested and [sic] to include all D.C. Official Codes as indicated. (i.e...14 DCMR Sect. 3826 (1998) and all applicable [s]ections for imposed interest and D.C. Official Code § 42-3509.01(a) (2001) for treble damages.

B. Technical Error – The denied decision on the substantial reduction in services and facilities, due to the lack of sufficient evidence, is untrue. Again, the allegations of the lack of [s]ervices and/or [f]acilities, for [the Appellant's] unit and the property were presented during the hearing and the Housing Provider representatives, talked around the issues/claims but did not produce any substantial evidence/documentation disputing those claims. The rodent/mice/roach infestation, still exist (saved in jars). The landlord

[2] The regulation 14 DCMR § 3815.1 (1991), states:

> Any party may move to request a continuance of any scheduled hearing or for extension of time to file a pleading, other than a notice of appeal, or leave to amend a pleading if the motion is served on opposing parties and the Commission at least five (5) days before the hearing or the due date; however, in the event of extraordinary circumstances, the time limit may be shortened by the Commission. Motions shall set forth good cause for the relief requested.

representatives presented false statements when they'd [sic] stated that "they are/were working on the main property security gate," which is still inoperable for over 4 years, and the Panic Alarm (unsecured back door) is still unarmed! There is evidence that this is/has been an ongoing problem dated [sic] back to 1998 (letter from the Harrison Institute of undone repairs). For example, there is again, a resurgence of drug activity on the [p]roperty in areas where the main gate should be locked and where the housing provider has failed to repair outside lighting. Also, the DCRA Housing [C]ode violations (i.e...Fire Alarm shut off valves, accessibility to fire extinguishers, price list for repairs & etc.) still exist. Again, the [h]ousing [p]rovider representatives did not dispute these and many other claims/allegations, in this tenant petition.

C. Technical Error 2 – The retaliatory action, of reporting false & slanderous statements to tenants, by the [h]ousing [p]rovider, does fit the criteria of retaliation under the act. [The appellant] was harassed, encountered undue and unavoidable inconveniences (by tenants), the privacy of [the appellant and appellant's] family was violated, and the quantity and quality of services were reduce[d]. Dirty hallways consisting of garbage, trash and graffiti still exists because the management staff were and are not addressing nor enforcing the no loitering policy when others and [the appellant] complained. Not until recently (pictures are available dating when action was taken) that something was done. Thus, the retaliatory action, from the landlord should be considered because of the above unwarranted, hostile encounters.

D. Typographical Errors – First, the property location, for this tenant petition is located on Lot No. 831 in [s]quare 6210, not on lot #731. Secondly, [the appellant] moved into [her] unit on August 14, 1998, not 2004. Thirdly, the issue of retaliation was not presented in the initial hearing of [sic] January 6, 2004. The issue of retaliation was presented on July 22, 2004, as an addendum. Also, on page 5, line 13, of the Decision and Order, it states, "[t]he respondent testified that she did not cut of [sic] the electricity," [this] is not my case nor claim.

(NOA) at 1.

III. DISCUSSION OF THE ISSUES

A. Whether the hearing examiner erred in omitting the years 2000 and 2001 from his rent overcharge calculations, thus resulting in an inaccurate award of a refund for the tenant.

The tenant contends that rent was charged in excess of the legally calculated rent ceiling for the years of 2000 and 2001. However, the hearing examiner's decision and order did not take into account those years; nor is any reason provided by the hearing examiner for their omission. The tenant petition was filed on November 14, 2003, thus, the tenant is granted review up to three years prior to that date. D.C. OFFICIAL CODE § 42-3502.06(e) (2001).[3] This means that the hearing examiner should have reviewed evidence relating to the rent charged from November 14, 2000.

The record indicates the housing provider perfected rent ceiling adjustments of general applicability pursuant to D.C. OFFICIAL CODE § 42-3502.06(b) (2001).[4] However, the record also indicates that rent charged for the tenant's unit exceeded the amount legally permissible corresponding with those perfected increases. R. at 23-28. Each year a housing provider is entitled to an increase in the rent ceilings of all rental units in a housing accommodation based on the Commission's calculation of the

[3] D.C. OFFICIAL CODE § 42-3502.06(e) (2001), provides in part: "[n]o petition may be filed with respect to any rent adjustment, under any section of this chapter, more than 3 years after the effective date of the adjustment."

[4] D.C. OFFICIAL CODE § 42-3502.06(b) (2001), states:

> On an annual basis, the Rental Housing Commission shall determine an adjustment of general applicability in the rent ceiling established by subsection (a) of this section. This adjustment of general applicability shall be equal to the change during the previous calendar year, ending each December 31, in the Washington, D.C., Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for all items during the preceding calendar year. No adjustment of general applicability shall exceed 10%. A housing provider may not implement an adjustment of general applicability, or an adjustment permitted by subsection (c) of this section for a rental unit within 12 months of the effective date of the previous adjustment of general applicability, or instead, an adjustment permitted by subsection (c) of this section in the rent ceiling for that unit.

percentage increase based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the previous calendar year. The housing provider must file a "Certificate of Election of Adjustment of General Applicability" with the RACD and must then post in a public place or mail to every tenant whose unit is affected a copy of a "Tenant Notice of Increase of General Applicability." Upon the proper perfection of a rent ceiling adjustment, a housing provider may delay its implementation, and such delay will not constitute forfeiture or loss of the increase.[5] However, upon implementation of a previously perfected but unimplemented rent increase, the housing provider must abide by D.C. OFFICIAL CODE § 42-3502.08(h)(1) (2001), which states, "each adjustment in rent charged permitted by this section may implement not more than 1 authorized and previously unimplemented rent ceiling adjustment." The permitted increase in rent charged is then calculated by adding the dollar increase of the rent ceiling adjustment of general applicability for that period, to the current rent charged. See The Rittenhouse, LLC v. Campbell, TP 25,093 (RHC Dec. 17, 2002).

Effective June 1, 2001, the tenant's rent was increased from $595.00 to $655.00. R. at 23. This $60.00 increase was $46.00 greater than an increase of general applicability would have permitted for that year. The housing provider contends that the increase was the result of a "vacancy increase that was preserved and not implemented," which is permitted under the Act. R. at 48.

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[5] D.C. OFFICIAL CODE § 42-3502.08(h)(2) (2001), states:

> Nothing in this subsection shall be construed to prevent a housing provider, at his or her election, from delaying the implementation of any rent ceiling adjustment, or from implementing less than the full amount of any rent ceiling adjustment. A rent ceiling adjustment, or portion thereof, which remains unimplemented shall not expire and shall not be deemed forfeited or otherwise diminished.

While the previously unimplemented vacancy rent ceiling increase can account for the rent charged in excess of the increase of general applicability for 2001, the record indicates that the rent increase effective January 1, 2000 also exceeded the rent ceiling increase of general applicability. The rent ceiling was increased by 1% pursuant to an increase of general applicability which raised the ceiling from $666.00 to $673.00, an increase of seven dollars. However, the rent charged for that unit was increased from $575.00 to $595.00, a twenty dollar increase, which is thirteen dollars greater than the increase of general applicability would permit. The housing provider claims no other perfected yet unimplemented rent increases to account for this disparity. Thus, the hearing examiner's decision is reversed and remanded to recalculate the refund of rent overcharges for the period from January 2000 through May 2001 at a rate of $13.00 per month, plus interest. This portion of the refund should also be trebled pursuant to the hearing examiner's finding of bad faith.

Additionally, the Commission notes plain error[6] in the hearing examiner's calculations of interest in his decision and order. Interest is calculated by multiplying the number of months the housing provider held the rent overcharge by the judgment interest rate[7] used by the Superior Court of the District of Columbia on the date that the hearing examiner issued the decision and order. The hearing examiner cites the interest rate used by the Superior Court on the day of his decision as 3% per annum. R. at 59. He then

[6] "Review by the Commission shall be limited to the issues raised in the notice of appeal; Provided, that the Commission may correct plain error." 14 DCMR § 3807.4 (1991). See also Proctor v. District of Columbia Rental Hous. Comm'n, 484 A.2d 542 (D.C. 1984) (holding that the Commission's rules permit it to consider issues that are not raised in the appeal, when the issues reveal plain error).

[7] Interest is calculated pursuant to 14 DCMR § 3826.3 (1998), which states: "[t]he interest rate imposed on rent refunds or treble that amount, if any, shall be the judgment interest rate used by the Superior Court of the District of Columbia pursuant to D.C. Official Code § 28-3302(c) (2001), on the date of the decision."

used 5% per annum in his interest calculations. Id. This is plain error. Accordingly, the hearing examiner's calculations of interest are reversed and remanded for proper identification of the correct interest rate and recalculation of the amount of interest owed to the tenant.

B. Whether the hearing examiner erred in finding that services and facilities had not been substantially reduced in the housing accommodation.

The Commission has set forth the burden on the tenant when asserting a claim of reduction or elimination of services under the Act.[8] The Commission stated:

> [F]or a tenant to successfully pursue a claim of reduction or elimination of services, a three-prong test must be satisfied. First, the tenant must provide evidence of a reduction or elimination of services, and the fact-finder must find that the housing provider eliminated or substantially reduced a service or services at the tenant's rental unit. Lustine Realty v. Pinson, TP 20,117 (RHC Jan. 13, 1989). Second, the tenant must establish the duration of the reduction in services, and present evidence to support his allegations. Daro Realty, Inc. v. 1600 16th St. Tenants Ass'n., TP 4,637 (RHC Oct. 20, 1988) cited in Cobb v. Charles E. Smith Mgmt. Co., TP 23,889 (RHC July 21, 1998). Third, the tenant must show that the housing provider had knowledge of the alleged reduction of services. Gelman Co. v. Jolly, TP 21,451 (RHC Oct. 25, 1990).

Ford v. Dudley, TP 23,973 (RHC June 3, 1999) at 5-6 (footnote omitted). In the instant case, TP 27,982 the tenant set forth numerous allegations of reduction in services and facilities. However, the hearing examiner's decision and order contains findings of fact and conclusions of law relating to only a fraction of the allegations raised by the tenant.

For example, in the petition and during the hearing, the appellant alleged that flooding had occurred in her unit which resulted in the growth of mildew and mold. See Tape Recording (RACD Jan. 6, 2004). Additionally, the record contains pictures in

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[8] The Act, D.C. OFFICIAL CODE § 42-3501.03(27)(2001), provides: "[r]elated services means services provided by a housing provider, required by law or by the terms of a rental agreement, to a tenant in connection with the use and occupancy of a rental unit, including repairs, decorating and maintenance...."

support of the flooding allegation. R. at 4. The first prong of the rule stated above requires that "the fact-finder must find that the housing provider eliminated or substantially reduced a service or services at the tenant's rental unit." Lustine Realty v. Pinson, TP 20,117 (RHC Jan. 13, 1989) at 4. Without a finding by the hearing examiner regarding all of the alleged reductions in services and facilities, the second and third prong of the test cannot be applied. The District of Columbia Court of Appeals has stated, "[t]o pass muster, an administrative agency decision must state findings of fact on each material, contested factual issue; those findings must be supported by substantial evidence in the agency record; and the agency's conclusions of law must follow rationally from its findings." Munchinson v. District of Columbia Dep't of Pub. Works, 813 A.2d 203, 205 (D.C. 2002). See also Jimenez v. District of Columbia Dep't of Employment Servs., 701 A.2d 837, 838-39 (D.C. 1997). Additionally, D.C. OFFICIAL CODE § 2-509(e) (2001), provides in part:

> [e]very decision and order adverse to a party to the case ...shall be accompanied by findings of fact and conclusions of law ... findings of fact shall consist of a concise statement of the conclusions upon each contested issue ... [which] shall be supported by and in accordance with the reliable, probative, and substantial evidence.

Thus, absent a complete finding on all of the contested issues, the hearing examiner's decision and order regarding the alleged reduction in services and facilities is reversed and remanded for the hearing examiner to issue the appropriate findings of fact and conclusions of law on the contested issues raised by the tenant.

C. Whether the housing provider's conduct constitutes retaliatory action against the tenant.

The tenant's notice of appeal lists several circumstances of alleged retaliation against her. First, the tenant claims that the housing provider reported complaints made

by her to the other tenants in the building, which was an invasion of her privacy. A definition of retaliatory conduct can be found in D.C. OFFICIAL CODE § 42-3505.02(a) (2001).[9] The "violation of privacy"[10] that the statute refers to was not meant to encompass the conversations that the housing provider may have had regarding the appellant's complaints regarding other tenants. More specifically it was meant to protect against unlawful intrusions of the housing provider into a tenant's living space. Accordingly, the decision of the hearing examiner regarding this issue is affirmed.

Additionally, the tenant claimed reduction of services as an issue of retaliation. Part of this claim is that the housing provider failed to deal with a loitering problem that exists at the housing accommodation. This claim does not fall under the purview of D.C. OFFICIAL CODE § 42-3505.02(a) (2001), because proof was not proffered by the tenant that establishes a decrease in services. In fact, the record contains evidence that the housing provider addressed complaints of loitering by instituting a "zero tolerance policy," where any violations of the loitering policy would result in "automatic

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[9] Retaliatory action, as it is defined under the statute, may take many forms, D.C. OFFICIAL CODE § 42-3505.02(a) (2001), provides in pertinent part:

> Retaliatory action may include any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit, action which would unlawfully increase rent, decrease services, increase the obligation of a tenant, or constitute undue or unavoidable inconvenience, violate the privacy of the tenant, harass, reduce the quality or quantity of service, any refusal to honor a lease or rental agreement or any provision of a lease or rental agreement, refusal to renew a lease or rental agreement, termination of a tenancy without cause, or any other form of threat or coercion.

[10] BLACK'S LAW DICTIONARY 829 (7th ed. 1999), defines invasion of privacy as:

> An unjustified exploitation of one's personality or intrusion into one's personal activity, actionable under tort law and sometime under constitutional law. The four types of invasion of privacy in tort are (1) an appropriation, for one's benefit, of another's name or likeness, (2) an offensive, intentional interference with a person's seclusion or private affairs, (3) the public disclosure, of an objectionable nature, of private information about another, and (4) the use of publicity to place another in a false light in the public eye.

termination." R. at 8. The evidence demonstrates the housing provider's attempts to address the problem. Lastly, the tenant claims that litter in the hallways was a reduction in services and facilities. The Commission is limited to the official record when reviewing appeals. Pursuant to 14 DCMR § 3807.5 (1991), which states, "the Commission shall not receive new evidence on appeal," the Commission may not address this issue as it was not raised in TP 27,982 nor was it mentioned during the RACD hearing. Accordingly, the Commission denies the aforementioned claims of retaliation against the tenant.

D. There are several typographical errors in the hearing examiner's decision and order that require change.

The hearing examiner's decision and order contains a description of the property that states the housing accommodation is located at "814 Southern Ave., S.E., on lot No. 731 in Square No. 6219 in Ward 8." R. at 65. However, the tenant asserts that the actual lot number is 831. NOA at 1. The hearing examiner also states the tenant's move in date as "August 14, 2004." R. at 65. The tenant argues that the correct move in date is August 14, 1998. NOA at 1. Lastly, the hearing examiner states in his decision (Decision at 5), "[t]he Respondent testified that she did not cut of [sic] the electricity," it is unclear whom this statement is in reference to, as there was no allegation of "cut-off electricity" in the tenant petition on the part of the tenant. A review of the tape recording from the hearing does not reflect that any evidence or testimony concerning "cut-off electricity" occurred. See Tape Recording (RACD Jan. 6, 2004). This issue is granted for corrections of typographical and other errors on remand by the hearing examiner.

IV. CONCLUSION

The Commission remands Issue A to the hearing examiner for recalculation of the rent overcharges. The Commission remands Issue B to the hearing examiner to make the necessary findings of fact and conclusions of law on the issue of reduction of services. The hearing examiner's decision regarding Issue C is affirmed. Lastly, Issue D is granted and remanded for the hearing examiner to correct the typographical errors contained in the decision and order.

SO ORDERED.

RUTH R. BANKS, CHAIRPERSON

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 27,982 was mailed by priority mail with delivery confirmation, postage prepaid, this **29th** day of July 2005 to:

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