DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,987

In re: 1319 Fairmont Street, N.W., Unit 8

Ward One (1)

MARTHA AKER
Housing Provider/Appellant

v.

BILLI PETERSON
Tenant/Appellee

DECISION AND ORDER

July 1, 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 19, 2003, Billi Peterson, tenant, filed Tenant Petition (TP) 27,987 in the Housing Regulation Administration (HRA). In the petition he alleged that the housing provider, Martha Aker: charged him rent in excess of the legally calculated rent ceiling; substantially reduced the services and facilities provided in connection with the rental unit; and directed retaliatory action against him. Hearing Examiner Carl Bradford

heard the case on January 7, 2004, and issued the decision and order on September 7, 2004.

The housing provider filed a notice of appeal on September 30, 2004, which was six days after the September 24, 2004 deadline for filing an appeal. An extension of time to file the appeal was granted by the Commission, because the RACD had a statutory duty under D.C. OFFICIAL CODE § 42-3502.16(j) (2001),[1] to assure delivery of the decision and order to the parties. The certified record contained no proof of the manner or date that the decision and order was mailed to the parties. Subsequently, the case was remanded back to the RACD to reissue the decision and order. On April 22, 2005, the RACD reissued the decision and order. The decision and order contained the following:

Findings of Fact:

1. The subject housing accommodation, 1319 Fairmont Street, N.W., is owned and managed by Martha Akers.

2. Petitioner Billi Peterson resides at 1319 Fairmont Street, N.W., Unit 8.

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 1319 Fairmont Street, N.W.

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

6. Respondent overcharged Petitioner $19.00 a month for two months.

7. Respondent overcharged Petitioner $69.00 a month for six months.

8. Respondent did not retaliate against Petitioner.

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[1] D.C. OFFICIAL CODE § 42-3502.16(j) (2001) states:

> A copy of any decision made by the Rent Administrator, or by the Rental Housing Commission under this section shall be mailed by certified mail or other form of service which assures delivery of the decision to the parties.

9. Respondent acted in bad faith when she implemented an illegal vacancy increase.

10. Respondent shall refund to Petitioner $452.00 plus $6.92 interest for a total refund of $458.92. This amount shall be trebled because of bad faith.

11. Petitioner's monthly rent shall be rolled back to $681.00 a month.

12. The Examiner trebles the refund because the Respondent acted in back [sic] faith when she implemented the illegal vacancy increase.

Conclusions of Law:

1. Respondent did reduce Petitioner's services/facilities in violation of D.C. OFFICIAL CODE, § 42-3502.11 (2001).

2. Respondent did not permanently eliminate services and facilities in violation of D.C. OFFICIAL CODE, § 42-3502.11 (2001).

3. Respondent did increase Petitioner's rent in violation of D.C. OFFICIAL CODE, § 42-3502.06 (2001).

4. Respondent acted in bad faith when she increased Petitioner's rent in violation of D.C. OFFICIAL CODE, § 42-3509.01(a) (2001).

5. Respondent shall refund to Petitioner $452.00 plus $6.92 interest. This amount shall be trebled for a refund of $1376.76, pursuant to D.C. OFFICIAL CODE § 42-3509.01(a) (2001).

Peterson v. Akers, TP 27,987 (RACD Apr. 22, 2005) (Decision) at 7-8.

On May 11, 2005, the housing provider filed a notice of appeal in the Commission, which held its appellate hearing on June 8, 2005.

II. THE ISSUES

The notice of appeal stated the following issues:

A. Respondent did not provide all documents important to this case during the hearing and did not request that the record remind [sic] open for the documents to be considered, do [sic] to not being informed of the process.

B. Respondent filed for the increase in Petitioner's rent as allowed and is not in violation of D.C. OFFICIAL CODE § 42-3502.06 (2001).

C. Respondent did not act in bad faith when she increased the rent for [Petitioner's unit] in accord with what was allowed.

D. Petitioner moved in the rental unit [in] August 2003, his schedule of rental payments paid is $700.00 for August and September – $750.00 for October – [n]o payment [for] November and a complaint was filed in Landlord Tenant Court.

E. Petitioner and Respondent agreed that the rents [sic] would be set back to $679.00 per month until the matter is concluded at DCRA. Petitioner did not pay November's rent and paid $679.00 for the months December, January, February [and] March. No payment for April or May and he move [sic] out on approximately May 16, 2004.

Notice of Appeal (Appeal) at 1.

III. DISCUSSION OF THE ISSUES

A. Whether additional documents should be considered by the Commission when the housing provider did not provide all documents important to this case during the hearing and did not request that the record remain open for the documents to be considered, because she was not informed of the process.

In the instant case the housing provider contends that an incomplete official record resulted in a flawed decision by the hearing examiner. The DCAPA, D.C. OFFICIAL CODE § 2-509(c) (2001) mandates that:

> The Mayor or the agency shall maintain an official record in each contested case, to include testimony and exhibits … [t]he testimony and exhibits, together with all papers and requests filed in the proceeding, and all material facts not appearing in the evidence but with respect to which official notice is taken, shall constitute the exclusive record for order or decision. No sanction shall be imposed or rule or order or decision be issued except upon consideration of such exclusive record.

Upon completion of the initial RACD hearing, additional documents containing new evidence are prohibited from entering the record, as the District of Columbia Court of Appeals (DCCA) stated, "[s]ince the documents submitted post-hearing contained new evidence not a part of the public record, we hold that the Examiner did not err in

excluding them from her consideration." Harris v. District of Columbia Rental Hous. Comm'n, 505 A.2d 66, 69 (D.C. 1986).

New evidence submitted post-hearing may not be admitted into the record, and may not provide a basis upon which an agency may issue a decision. Id. at 69, citing Carey v. District of Columbia Unemployment Compensation Bd., 304 A.2d 18, 20 (D.C. 1973). Therefore, the housing provider's statement that the hearing examiner consider additional documents, which were not presented at the RACD hearing, is without merit and contrary to the court's decision in Harris.

Furthermore, the housing provider claims that she had not been informed of the RACD hearing process and was therefore unprepared for the hearing. Appeal at 1. The Official Notice of Hearing (Notice), which was sent to the housing provider by priority mail on December 9, 2003, states, "[b]oth parties should bring documents and records to support or refute contested issues." Notice at 1. The housing provider's claim of being uninformed is unsubstantiated, thereby, warranting no further consideration. Accordingly, for the foregoing reasons the appeal of this issue is denied.

B. Whether the housing provider filed for the increase in tenant's rent as allowed and was therefore not in violation of D.C. OFFICIAL CODE § 42-3502.06 (2001).

The housing provider alleges that an Amended Registration form was filed in 2003 that allowed her to charge the $750.00 per month rent for 1319 Fairmont Street, N.W., Unit 8.[2] Tape Recording (RACD Jan. 7, 2004). As addressed previously in this

[2] D.C. OFFICIAL CODE § 42-3502.13 (2001) states in part:

(a) When a tenant vacates a rental unit on the tenant's own initiative or as a result of a notice to vacate for nonpayment of rent, violation of an obligation of the tenant's tenancy, or use of the rental unit for illegal purpose or purposes as determined by a court of competent jurisdiction, the rent ceiling may, at the election of the housing provider, be adjusted to either: (1) The rent ceiling which would otherwise be applicable to a rental unit under this chapter plus 12% of the ceiling once per 12-month period.

decision, D.C. OFFICIAL CODE § 2-509(c) (2001) states in part, "[t]he testimony and exhibits, together with all papers and requests filed in the proceeding, and all material facts not appearing in the evidence but with respect to which official notice is taken, shall constitute the exclusive record for order or decision." The official record in the instant case does not contain any evidence of the housing provider's claimed filing of an Amended Registration form for 2003. Moreover, the housing provider failed to request that the hearing examiner take official notice of the RACD record, which may have included a copy of the Amended Registration form. As the Notice explicitly states, parties are responsible for "bring[ing] documents and records to support or refute contested issues." Notice at 1. The Commission confines its review to the materials that are contained within the official record.[3]

Because the record contained no evidence which contradicts the hearing examiner's finding, the Commission affirms the hearing examiner's determination that the rent increase imposed by the housing provider was in violation of D.C. OFFICIAL CODE § 42-3502.06(a) (2001).[4] Accordingly, the Commission denies Issue B.

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[3] The regulation, 14 DCMR § 3807.5 (1991), states:

> The Commission shall not receive new evidence on appeal.

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

> (a) Except to the extent provided in subsections (b) and (c) of this section, no housing provider of any rental unit subject to this chapter may charge or collect rent for the rental unit in excess of the amount computed by adding to the base rent not more than all rent increases authorized after April 30, 1985, for the rental unit by this chapter, by prior rent control laws and any administrative decision under those laws, and by a court of competent jurisdiction. No tenant may sublet a rental unit at a rent greater than that tenant pays the housing provider.

C. Whether the housing provider acted in bad faith when she increased the rent for the tenant's unit, thus warranting an imposition of treble damages.

Treble damages may be awarded upon proper application of a two-prong test used to determine whether any person has knowingly and in bad faith demanded or received rent in excess of the maximum allowable rent.[5] See Linen v. Lanford, TP 27,150 (RHC Sept. 29, 2003) at 5. In the instant case, the hearing examiner determined that the housing provider, Martha Aker, "owned/managed" the housing accommodation, which was the subject of the petition. Accordingly, the hearing examiner held, the housing provider knew or should have known about the proper procedures used to perfect a vacancy adjustment in the rent ceiling of a rental unit. The Commission in Reid v. Quality Mgmt. Co., TP 11, 307 (RHC Feb. 7, 1985) held that a housing provider is "imputed to have knowledge of a reasonable, prudent man involved in the business of renting properties in the District of Columbia." Reid v. Quality Mgmt. Co., TP 11, 307 (RHC Feb. 7, 1985) at 2-3 aff'd, Quality Mgmt. v. District of Columbia Rental Hous. Comm'n, 505 A.2d 73 (D.C. 1986). Thus, the Commission affirms the hearing examiner who found that the housing provider knowingly violated the Act by increasing the tenant's rent in excess of the legally calculated rent ceiling.

However, the explanation contained in the decision and order concluding that the housing provider's act was also in bad faith is insufficient. The decision states, "[t]he

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[5] D.C. OFFICIAL CODE § 42-3509.01(a) (2001) states:

> Any person who knowingly (1) demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of subchapter II of this chapter, or (2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent ceiling or for treble that amount (in the event of bad faith) and/or for a roll back of the rent to the amount the Rent Administrator or Rental Housing Commission determines. (emphasis added.)

examiner finds that Respondent also acted in bad faith because she raised Petitioner's rent illegally." Decision at 6. In Fazekas v. Dreyfus Brothers Inc., TP 20,394 (RHC Apr. 14, 1989), the Commission clearly indicates the error of the examiner's decision and order in the instant case when it stated, "the Rent Administrator - - without making additional findings - - converted this knowing violation into an act of bad faith. To convert a mere knowing violation into an act of bad faith essentially nullifies the distinction between the two which the D.C. Council recognized when it changed the criteria for treble damages in § 910 of the 1985 Act." Id. at 14-15. Without further justification, the examiner's reasoning is insufficient to support an award of treble damages. The issue of bad faith and liability of the housing provider for treble damages is remanded to the hearing examiner to identify the substantial record evidence that would support an award of treble damages. If the hearing examiner determines that bad faith exists, the findings of fact and conclusions of law should include any of the following necessary elements of bad faith, "egregious conduct, deliberate refusal to perform without reasonable excuse, dishonest intent, sinister motive, or a heedless disregard of duty." See Carter v. Davis, TP 23, 535-553 (RHC June 30, 1998), citing Quality Mgmt v. District of Columbia Rental Hous. Comm'n, 505 A.2d 73 (D.C. 1986).

D. Petitioner moved in the rental unit in August 2003, his schedule of rental payments paid is $700.00 for August and September – $750.00 for October. There was no payment for November and a complaint was filed in Landlord Tenant Court.

E. Petitioner and Respondent agreed that the rent would be set back to $679.00 per month until the matter was concluded at DCRA. Petitioner did not pay November's rent and paid $679.00 for the months December, January, February and March. No payment for April or May and he moved out on approximately May 16, 2004.

According to 14 DCMR § 3802.5(b) (1991), a notice of appeal must contain "a clear and concise statement of the alleged error(s) in the decision of the Rent Administrator." The Commission has held that when an appeal issue is not a clear and concise statement of an alleged error it is "violative of the Commission's rules on appeals." Pierre-Smith v. Askin, TP 24,574 (RHC Feb. 29, 2000) at 31.

Issues D and E are the housing provider's account of events that transpired prior to the hearing. These statements do not allege any error in the hearing examiner's decision. The Commission, therefore, dismisses Issues D and E as they are not in compliance with 14 DCMR § 3802.5(b) (1991).

IV. CONCLUSION

The Commission concludes that in Issue A the hearing examiner was correct in basing his decision only on the evidence contained in the official record; therefore, this appeal issue is denied. In Issue B, the Commission affirms the hearing examiner's determination that the rent increase violated D.C. OFFICIAL CODE § 42-3502.06(a) (2001). The Commission remands Issue C for findings of fact and conclusions of law in support of the hearing examiner's holding that the housing provider acted in bad faith that resulted in an award of treble damages for the tenant. Lastly, the Commission dismisses Issues D and E, because the housing provider failed to allege any error, in a clear and concise manner, in the hearing examiner's decision.

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 27,987 was mailed by priority mail with delivery confirmation, postage paid, this 1st day of July 2005 to:

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1319 Fairmont Street, N.W., Unit #8
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