

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,987

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

Ward One (1)

MARTHA AKERS
Housing Provider/Appellant

v.

BILLI PETERSON
Tenant/Appellee

DECISION AND ORDER

November 24, 2004

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 (1991), govern the proceedings.

I. THE PROCEDURES

The Rental Accommodations and Conversion Division (RACD) certified the hearing file to the Commission. The file contains a decision and order dated September 7, 2004, with a statement that appeals must be filed in the Commission by September 24, 2004. Record (R.) at 42; decision at 10. There is no proof of mailing or delivery of the

decision and order to the parties. On September 30, 2004, the Commission received the Housing Provider's notice of appeal. Based on the mailing date and the notice in the decision, the appeal appears to be untimely filed, because it was filed six days after the September 24, 2004 date in the decision.

II. THE ISSUE

Whether the Housing Provider's notice of appeal was timely filed.

III. THE LAW

The Commission is required by law to dismiss appeals that are untimely filed, because time limits are mandatory and jurisdictional. United States v. Robinson, 361 U.S. 209 (1960); Hija Lee Yu v. District of Columbia Rental Hous. Comm'n, 505 A.2d 1310 (D.C. 1986); Totz v. District of Columbia Rental Hous. Comm'n, 474 A.2d 827 (D.C. 1974). The Commission determines the time period between the issuance of the RACD decision and the filing of the notice of appeal by counting only business days, as required by its rules. See 14 DCMR § 3802.2 (1991); Town Center v. District of Columbia Rental Hous. Comm'n, 496 A.2d 264 (D.C. 1985). See Florio v. Van Wyck, TP 27,878 (RHC Oct. 24, 2003) (where the Commission denied a motion to extend the period to file an appeal, because appeal periods are mandatory and jurisdictional). A court may sua sponte raise a jurisdictional issue. See Brandywine v. District of Columbia Rental Hous. Comm'n, 631 A.2d 415 (D.C. 1993). As stated above, timeliness of an appeal is a jurisdictional issue.

For appeals, the Commission's rules state:

A notice of appeal shall be filed by the aggrieved party within ten (10) days after a final decision of the Rent Administrator is issued; and if the decision is served by mail an additional three (3) days shall be allowed.

14 DCMR § 3802.2 (1991).

The filing of a notice of appeal removes jurisdiction over the matter from the Rent Administrator; Provided that if both a timely motion for reconsideration and a timely notice of appeal are filed with respect to the same decision, the Rent Administrator shall retain jurisdiction over the matter solely for the purpose of deciding the motion for reconsideration, and the Commission's jurisdiction with respect to the notice of appeal shall take effect at the end of the ten (10) day period provided by §4014.

14 DCMR § 3802.3 (1991).

When the time period is ten (10) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

14 DCMR § 3816.3 (1991).

The time limit for filing an appeal of agency actions is mandatory and jurisdictional” and once the time prescribed by the rule has passed, the reviewing court is without power to hear the case. Totz v. District of Columbia Rental Hous. Comm’n, 474 A.2d 827, 829 (D.C. 1984). In Smith v. District of Columbia Rental Hous. Comm’n, 411 A.2d 612, 614 (D.C. 1980), the court vacated the Commission's action that occurred on an appeal that was filed late. See Young v. Majeed & Independence Property Mgmt., TP 20,352 (RHC Feb. 12, 1988) (where the Commission dismissed an appeal filed one day too late).

D.C. OFFICIAL CODE § 42-3502.16(j) (2001), provides:


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.

See Joyce v. District of Columbia Rental Hous. Comm’n, 741 A.2d 24 (D.C. 1999) (where the court reversed the Commission for failure to follow the requirements of the Act of service of a decision by certified mail or other manner that assures delivery).

IV. THE CONCLUSION

RACD had the statutory duty under D.C. OFFICIAL CODE § 42-3502.16(j) (2001), to assure delivery of the decision and order to the parties. The certified record does not show how (manner) and when (date) the decision and order was delivered to the parties. In the absence of record proof of delivery of the decision and order, the Commission cannot hold that the notice of appeal was untimely filed, since the record does not show how and when the decision and order was mailed, such as certified mail or priority mail, to assure delivery to the parties. The record also does not show whether the parties received the delivery of the decision and order. Accordingly, this appeal is dismissed and remanded to RACD to reissue the decision and order, and insert proof of mailing and delivery of the decision and order into the certified record. The parties may appeal after the reissuance of the decision and order in accordance with the ten day rule.

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 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:

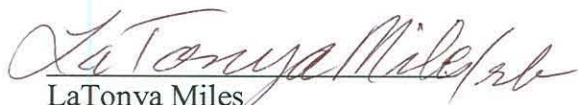
D.C. Court of Appeals
Office of the Clerk
500 Indiana Avenue, N.W.
6th Floor
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in TP 27,987 was mailed by priority mail, with confirmation of delivery, postage prepaid this **24th day of November, 2004**, to:

Billi Peterson
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