DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 28,197

In re: 900 48th Place, N.E., Unit 4

Ward Seven (7)

CARL HARRIS
Tenant

v.

LILLIAN WILSON
Housing Provider

DECISION AND ORDER

July 12, 2005

PER CURIAM. This case is before the District of Columbia Rental Housing Commission (Commission) pursuant to the 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 Act, 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. In accordance with § 42-3502.16(h), the Commission initiated review of the Rent Administrator's decision issued by Hearing Examiner Carl Bradford on May 3, 2005.

I. THE PROCEDURES

Carl Harris, tenant, filed Tenant Petition (TP) 28,197 on September 10, 2004. In the petition, the tenant alleged that: 1) a rent increase was taken while his unit was not in substantial compliance with the District of Columbia Housing Regulations; 2) services and/or facilities, as set forth in a Voluntary Agreement filed with and approved by the

Rent Administrator under Section 215 of the Act have not been provided as specified; and 3) the housing provider, manager or other agent of the housing provider of his unit has violated the provisions of an unspecified section of the Act.

An RACD hearing was held on November 3, 2004 with Hearing Examiner Carl Bradford presiding. On May 3, 2005, the hearing examiner issued his decision and order. The decision and order contained the following:

Findings of Fact:

1. The subject housing accommodation is a multi-unit apartment building located at 900 - 48th Place, NE [sic] Washington, DC [sic]. Petitioner rents apartment #4 in the subject housing accommodation.

2. Petitioner has resided in the subject premises since October 1, 2001 and at all times relevant to this Petition.

3. Lillian Wilson has managed the subject premises at all relevant times and is the Respondent in this matter.

4. The Respondent failed to make timely repairs to bedroom ceiling [sic] in the unit after being put on notice of the housing code violation.

5. Petitioner in March 2004 contacted the D.C. Housing Inspection Division to inspect unit #4.

6. The Petitioner contacted the Respondent's repairman about making repairs in his unit in March 2004.

7. The Petitioner provided Respondent with written notice of [the] alleged ceiling defect in apartment #4 via the Housing Inspection Notice.

8. All other housing code violations which were made known to the Respondent were repaired prior to the hearing.

9. The evidence presented supports a finding of substantial housing code violations in the housing accommodation.

10. The evidence supports a finding that services or facilities have been reduced when Respondent failed to timely repair the bedroom ceiling in unit #4.

11. There was no rent increase implemented or requested based on the testimony of both parties.

12. Petitioner is entitled to a rent refund based on the finding of substantial reduction in service based on the Respondent's failure to timely repair the hole in Petitioner's bedroom ceiling.

Harris v. Wilson, TP 28,197 (RACD May 3, 2005) at 6-7.

Conclusions of Law:

1. Respondent substantially reduced services or facilities to the subject accommodation in violation of D.C. OFFICIAL CODE § 42-3502.12 (2001).

2. Respondent shall refund to Petitioner $175.00 plus $7.00 interest for a total refund of $182.00 pursuant to D.C. OFFICIAL CODE § 42-3509.01 (2001).

3. All other issues are dismissed.

Id. at 7.

On May 19, 2005, the Commission initiated review of the hearing examiner's decision and order pursuant to D.C. OFFICIAL CODE § 42-3502.16(h) (2001) and 14 DCMR § 3808 (1991).[1] In accordance with 14 DCMR § 3808.2 (1991), the Commission held a hearing on June 21, 2005 to provide the parties an opportunity to present

[1] The regulation, 14 DCMR § 3808 (1991), provides:

3808.1 Not later than twenty (20) days after the deadline for the parties to file an appeal, the Commission may initiate a review of any decision of the Rent Administrator.

3808.2 The Commission shall serve the parties who appeared before the hearing examiner with its reasons for initiating a review and shall inform them of their right and opportunity to present arguments on the issues identified by the Commission.

3808.3 All due process rights afforded parties in a review commenced by a notice of appeal shall also be provided when the review is initiated by the Commission.

3808.4 In appeals initiated pursuant to this section, the provisions of §§3802.10, 3802.11 and 3805.5 shall not apply.

arguments on the issues identified by the Commission. The Commission mailed the hearing notices by priority mail with delivery confirmation.

When the Commission convened the hearing on June 21, 2005, neither party appeared. The Commission reviewed the record and discovered that the record contained a Waiver of Right to a Hearing in Commission Initiated Review for the housing provider. The record did not contain a Waiver of Right to a Hearing in Commission Initiated Review for the Tenant; however, the record does contain a United States Postal Service (USPS) tracking document, which reflects delivery of notice to the tenant's address on May 21, 2005. Because there is record proof that the USPS delivered the Commission's hearing notice to the tenant, the Commission has satisfied its regulations under 14 DCMR § 3808 (1991) which require the Commission to observe due process guarantees and provide the parties an opportunity to present arguments on the issues identified by the Commission.

II. THE ISSUES

In its notice of initiated review, the Commission raised the following six issues:

A. Whether the hearing examiner erred when she [sic] assessed $666 as the monthly value of services and facilities and bare shelter was assessed as $334, which total more than the $500 rent.

B. Whether the hearing examiner erred when she [sic] wrote that the duration of the reduction of services was both seven (7) months and eight (8) months.

C. Whether the hearing examiner erred by stating the tenant testified the duration of the housing code violation and reduction of services was seven (7) months, but the hearing examiner used eight (8) months for the rent refund and interest calculation.

D. Whether the hearing examiner erred when she [sic] used 13 months rather than seven or eight months as the period of duration of the violation, when calculating the interest.

E. Whether the hearing examiner erred when she [sic] failed to calculate the interest on the total rent refund to the date of the decision.

F. Whether the hearing examiner erred by failing to label one column as monthly interest, rather than "Annual Interest."

Notice to Parties of Commission Initiated Review, (RHC May 19, 2005) at 2.

III. DISCUSSION OF THE ISSUES

A. Whether the hearing examiner erred when he assessed $666 as the monthly value of services and facilities and bare shelter was assessed as $334, which total more than the $500 rent.

The Commission has held that "evidence of the existence, duration and severity of a reduction in services and/or facilities is competent evidence upon which the Rent Administrator ... may fix a dollar value of a reduction in services or facilities without expert or other direct testimony on the dollar value of the reduction." George I. Borgner, Inc. v. Woodson, TP 11,848 (RHC June 10, 1987). In setting a dollar value on the reduction of services and/or facilities, the hearing examiner must first establish the value of the rental unit. Typically, one third of the monthly rent is said to be for the shelter itself while the remaining two thirds are to pay for related services and facilities. Id. From this total, the dollar amount of the reduction of services and/or facilities can be subtracted to determine a reduced rent ceiling.[2] If the rent actually charged is higher than the reduced rent ceiling, the housing provider is liable for a rent refund. Kemp v. Marshall Heights Cmty. Dev. Ctr., TP 24,786 (RHC Aug. 1, 2000) at 8.

[2] The term "rent ceiling" applies to the maximum amount of rent a housing provider is allowed to charge and is comprised of the base rent plus any additions to the base rent authorized pursuant to the Act. D.C. OFFICIAL CODE § 42-3502.06(a) (2001).

In the instant case, the record evidence reflects that the tenant paid a monthly rent of $500.00. It is from this total that the hearing examiner was to determine the value of the unit. However, the hearing examiner found the value of the unit to be $666.00 for services and facilities, and $334.00 for "bare shelter." Harris v. Wilson, TP 28,197 (RACD May 3, 2005) at 4. Using the standard above, these totals would conform to a unit with a rent ceiling of $1000.00, not $500.00. The hearing examiner also determined the value of the hole in the tenant's bedroom ceiling to be $25.00 per month. Id. According to these calculations, the reduced rent ceiling of $1000.00 for the subject unit would be $975.00. However, the hearing examiner based his calculations for the rent refund on a reduced rent ceiling of $475.00, which is $500.00 minus $25.00. Id. at 6.

Because the hearing examiner's calculation used $666.00 as the monthly value of services and facilities and $334.00 as the value of the shelter, the reduced rent ceiling does not total the reduced rent ceiling of $475.00 he actually used when he determined the amount of rent refund due; therefore, this issue is reversed and remanded for re-calculation of the reduced rent ceiling.

B. Whether the hearing examiner erred when he wrote that the duration of the reduction of services was both seven (7) months and eight (8) months.

C. Whether the hearing examiner erred by stating the tenant testified the duration of the housing code violation and reduction of services was seven (7) months, but the hearing examiner used eight (8) months for the rent refund and interest calculation.

The hearing examiner stated in his Decision and Order that the tenant testified that the hole in his bedroom ceiling existed for seven months. Harris v. Wilson, TP 28,197 (RACD May 3, 2005) at 3. However, in his calculation of the refund and interest

chart, the hearing examiner used eight months as the period of overcharge.[3] According to 14 DCMR § 3807.4 (1991), "[r]eview by the Commission shall be limited to the issues raised in the notice of appeal; provided, that the Commission may correct plain error." Nezhadessivandi v. Ayers, TP 25,091, 5 n.2 (RHC Nov. 1, 2002). The "[p]lain error rule" encompasses errors which are obvious, which prejudiced the fundamental rights of the accused. BLACK'S LAW DICTIONARY 1035 (5th ed. 1975). The inconsistencies in the durations of the violations indicated by the hearing examiner, as well as the failure to include the month of April 2004 in his calculations of the refund and interest, are therefore clearly plain error. Accordingly, these issues are reversed and remanded for clarification on the duration of the violation.

D. Whether the hearing examiner erred when he used 13 months rather than seven or eight months as the period of duration of the violation, when calculating the interest.

The District of Columbia Court of Appeals (DCCA) approved the Commission's practice of awarding interest on a rent refund until the date of the final decision. Jerome Mgmt., Inc. v. District of Columbia Rental Hous. Comm'n, 682 A.2d 178, 186 (D.C. 1996). The DCCA held that "interest should be awarded on the damages incurred from the time [an item in leased premises] became inoperable until the present, not just for the ... months during which the loss ... occurred." Marshall v. District of Columbia Rental Hous. Comm'n, 533 A.2d 1271, 1278 (D.C. 1987), cited in Jerome Mgmt., Inc. v. District of Columbia Rental Hous. Comm'n, 682 A.2d 178, 186 (D.C. 1996).

In the instant case, the hearing examiner labeled a column in his refund and interest calculation chart as "Month held to hearing." Harris v. Wilson, TP 28,197

[3] The hearing examiner used March 2004 through November 2004, excluding April 2004.

(RACD May 3, 2005) at 6. This label indicates that the values in the column represent the duration of the violation. However, the hearing examiner had previously stated seven and eight months as the duration of the violation, but used 13 months as the starting point for the duration of the violation. Based on the record, it is impossible for the Commission to determine whether the hearing examiner simply mislabeled the column and should have labeled it "Month held to decision." In either case, however, thirteen months is a miscalculation of the number of months from the commencement of the violation to the issuance of the hearing examiner's decision and order.

Because the hearing examiner erroneously used thirteen months as the duration of the violation, this issue is reversed and remanded for findings of fact and conclusions of law regarding the number of months of interest the tenant should have been awarded and a recalculation of the rent refund and interest.

E. Whether the hearing examiner erred when he failed to calculate the interest on the total rent refund to the date of the decision.

According to the Commission rules, "[i]nterest is calculated from the date of the violation … to the date of the issuance of the decision."[4] The hearing examiner stated in his Decision and Order that "[t]he refund and interest will be computed based on the amount by which the rent paid exceeded the legal rent charge[d] for the period of time of the overcharge, with interest calculated from the first month of the overcharge through the date of the decision and order (March 2004 thru April 2005 – 13 months)." Harris v. Wilson, TP 28,197 (RACD May 3, 2005) at 6. However, a thirteen-month period starting

[4] 14 DCMR § 3826.2 (2004) available at http://www.amlegal.com/nxt/gateway.dll/Title%2014/chapter00033.htm?f=templates$fn=main-nf.htm$3.0#JD_3826.

at the beginning of March 2004 would include all dates until the *beginning* of April 2005, [5] not all dates up to the date of the issuance of the decision.

Because the total number of months from the commencement of the violation to the issuance of the hearing examiner's decision and order exceeded thirteen months, this issue is reversed and remanded for further analysis and findings of fact and conclusion of law on the duration of time applicable to the payment of interest.

F. Whether the hearing examiner erred by failing to label one column as "Monthly Interest," rather than "Annual Interest."

The Commission has held that "[i]nterest is calculated using the formula, I (interest) = P (principal) x R (rate) x T (time). Interest is calculated by multiplying the amount of overcharge[,] by the number of months the overcharge was held by the housing provider, by the annual judgment interest rate, which has been converted to a monthly rate. A separate calculation is performed for each month, to arrive at the total." Hudley v. McNair, TP 24,040 (RHC June 30, 1999) at 17-18, cited in Noori v. Whitten, TP 27,045-TP 27,046 (RHC Sept. 13, 2002).

In the instant case, the hearing examiner labeled one column in his chart for refund and interest calculations as "Annual Interest," and put the annual interest rate in each cell of that column. From the values in that column, the hearing examiner calculated out the monthly interest rate and put that value in another column, labeled "Annual Interest" as well. Therefore, because the hearing examiner should have labeled the second interest column "Monthly Interest," the hearing examiner erred when he failed to label one column as "Monthly Interest" rather than "Annual Interest."

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[5] This time period would include March, April, May, June, July, August, September, October, November, and December of 2004 (ten months) as well as January, February, and March of 2005 (three months). However, the time period should also include April 2005 and May 1-3, 2005.

This error, however, is harmless. Harmless error is defined as:

> 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 .... Harmless error is not a ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless such refusal appears to the court inconsistent with substantial justice.[6]

As previously stated, the hearing examiner failed to label the "Monthly Interest" column as such. While the hearing examiner was in error, this error had no significant impact on the outcome of the case as the resulting calculations were performed correctly in accordance with the aforementioned formula. Therefore, while the hearing examiner erred in failing to label one column as "Monthly Interest," this error is harmless.

IV. CONCLUSION

Because the hearing examiner's calculation of the reduced rent ceiling does not total the reduced rent ceiling he actually used when he determined the amount of rent refund due, Issue A is reversed and remanded for re-calculation of the reduced rent ceiling. The hearing examiner had two different durations for the violation in his decision and order, and the hearing examiner failed to include the month of April 2004 in his refund and interest calculations. Therefore, Issues B and C are remanded for clarification of the duration of the violation. Because the hearing examiner erroneously used thirteen months as the duration between the commencement of the violation and the date of the hearing, the hearing examiner is reversed and Issue D is remanded findings of fact and conclusions of law regarding the number of months of interest the tenant should have been awarded. The total number of months from the commencement of the violation to the issuance of the hearing examiner's decision and order exceeded thirteen

[6] BLACK'S LAW DICTIONARY 646 (5th ed. 1975), quoted in Ford v. Dudley, TP 23,973 (RHC June 3, 1999) at 9.

months; therefore, Issue E is remanded for further analysis and findings of fact on the duration of time applicable to the payment of interest. Finally, while the hearing examiner erred in failing to label one column as "Monthly Interest," his subsequent calculations of interest were correct. Therefore, this error was harmless and Issue F is dismissed.

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 hereby certify that a copy of the foregoing Decision and Order in TP 28,197 was mailed by priority mail with delivery confirmation, postage prepaid, this **12th** day of **July 2005**, to:

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