

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 28,242

In re: 1625 West Virginia Avenue, N.E.

Ward Five (5)

CHRISTOPHER BOURN
Housing Provider/Appellant/Cross Appellee

v.

LINDA ANTHONY
Tenant/Appellee/Cross Appellant

ORDER DISMISSING APPEALS

November 17, 2005

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 (2004), govern the proceedings.

I. THE PROCEDURES

On December 6, 2004, Linda Anthony, Tenant, filed Tenant Petition (TP) 28,242 in RACD. On May 18, 2005, Hearing Examiner Sandra McNair issued the decision and order, which stated all appeals must be filed in the Commission no later than June 7, 2005. On May 25, 2005, William S. Bach, Esquire filed a Notice of Appeal for

Christopher Brown [sic], Housing Provider. On May 31, 2005, Attorney Bach filed an Amended Notice of Appeal, which corrected Mr. Brown's surname to Mr. Bourn in several places in the Notice of Appeal. Otherwise, the Amended Notice of Appeal and the original Notice of Appeal were identical. On July 11, 2005, Linda Anthony, Tenant, filed a Notice of Appeal, which was after the date of June 7, 2005, in the decision for filing appeals. The Commission held its appellate hearing on July 27, 2005. On October 31, 2005, Attorney Bach filed a motion for expeditious ruling.

II. THE ISSUE

The Commission raises the preliminary issue whether it has properly filed appeals before it.

A. The Tenant's Notice of Appeal

The appeal filed by Linda Anthony is untimely filed in the Commission, because it was filed after the date for appeals stated on the decision. The Rental Housing Act of 1985 provides that appeals may be made to the Commission from the decisions of the Rent Administrator within ten (10) days of the Rent Administrator's decision. D.C. OFFICIAL CODE § 42-3502.16(h) (2001).

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. Dist. of Columbia Rental Hous. Comm'n, 505 A.2d 1310 (D.C. 1986); Totz v. Dist. 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 (2004); Town Center v. Dist. of Columbia Rental Hous. Comm'n, 496 A.2d 264 (D.C. 1985).

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 (2004).

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 (2004).

If a party is required to serve papers within a prescribed period and does so by mail, three (3) days shall be added to the prescribed period to permit reasonable time for mail delivery.

14 DCMR § 3816.5 (2004).

In this appeal, the thirteen business day time period commenced on May 19, 2005, which was the first business day after the Rent Administrator's decision was issued and served by mail. The thirteen business day period provided in rules, 14 DCMR § 3802.2-.3 (2004), ended on June 7, 2005 and the Tenant filed her appeal on July 11, 2005, more than a month after the time period for filing appeals expired on June 7, 2005. See The New Capitol Park Twin Towers Tenants v. American Rental Mgmt. Co., TP 27,926 (RHC Jan. 23, 2004) (where the Commission dismissed an appeal filed two days late); Camp v. Ghani, TP 27,533 (RHC Jan. 27, 2003) (where appeal dismissed because filed too late); Jassiem v. The Jonathan Woodner Co., TP 27,348 (RHC June 24, 2002) (where the Commission dismissed the appeal, because it was untimely filed). Accordingly, the Tenant's Notice of Appeal is dismissed, because it was untimely filed.

B. The Housing Provider's Notice of Appeal

The Housing Provider's appeal is dismissed, because it violated the Commission's rule, 14 DCMR § 3802.5(b) (2004) which states: "[t]he notice of appeal shall contain the following: ... (b) a clear and concise statement of the alleged error(s) in the decision of the Rent Administrator." The Housing Provider's notice of appeal does not contain any reference to an error in the decision of the Rent Administrator. The notice of appeal states:

1. "We believe that the Decision in the above case was clear error that should have been obvious on its face." The clear error was not identified.
2. "What was also absent were the necessary exhibits to present his case." The necessary exhibits were not identified, nor is that an error nor a duty of the Rent Administrator. Lack of evidence is an error of the Housing Provider.
3. "It was obvious that Mr. Christopher Bourn should have had an attorney advise him as to his rights as a landlord." This sentence does not state why it was obvious the Housing Provider needed an attorney and what rights were violated by the Rent Administrator's decision. Therefore, it does not describe error in the decision of the Rent Administrator.
4. "Much of the evidence was here say [sic] and should be considered as such." This statement does not describe an error based on hearsay. Hearsay can be the basis for substantial evidence to support findings of fact. See *Wisconsin Ave. Nursing Home v. District of Columbia Human Rights Comm'n*, 527 A.2d 282, 288 (D.C. 1987). There the court stated, "substantial evidence means more than a mere scintilla; it means such relevant evidence as a reasonable mind might accept as adequate to support a

conclusion.” Id. at 288. Upon review of the record, the court found finding of fact number 20 flawed, because of insufficient support for the finding. Id. at 288.

5. “The attached exhibit will show this case is about greed and not contract law nor reason of the tenant. Tenant is unreasonable. (Exhibit 1). The threats will show the tenant’s true motives and goals in continuing to rent from a landlord who will never satisfy her.” Exhibit 1 states, “Mr. Bourn, you better hope I win this case. [C]ause if I don’t; I will go to Human Rights next and I will sue you for everything I can get. Ms. Anthony.” These two statements and the text of Exhibit 1 have nothing to do with the decision of the Rent Administrator and do not identify error in that decision.

6. “A copy of this Notice of Appeal was filled [sic] and notice by first class mail and personal service on the 24th, of May 2005.” This statement does not refer to an error in the Rent Administrator’s decision.

7. “Tenant is a moth [sic] to month tenant who is tying up my clients property for the sole purpose of Financial gain. ALL REPAIRS HAVE BEEN Made... The tenant can’t force others to satisfy her early to bed and her temperance and religious beliefs. We look forward to an early appeal date as Mr. Bourn needs a place to live and it is a hardship staying with friends. At all times he has had the proper license in his four unit property and is entitled to have the apartment occupied by Linda Anthony, unit 1. There has never been a vindictive act by Mr. Bourn...” None of these statements identify an alleged error in the decision of the Rent Administrator as required by § 3802.5(b).

Moreover, the only issue checked on the petition, as an allegation against Mr. Bourn, was “retaliation.” See Petition at p. 5. See also Parreco v. Dist. of Columbia Rental Hous. Comm’n, No. 03-AA-1488 (D.C. Oct. 27, 2005) (where the court stated the tenant did not

give adequate notice of the allegation in the petition about an improper rent increase, because the tenant failed to check a box on the petition form to indicate that rent increase was an issue).

Failure to raise errors in the Rent Administrator's decision and order violates 14 DCMR § 3802.5(b) (1991), and caused dismissal of appeals, under 14 DCMR § 3802.13 (1991). See Tenants of 829 Quincey St. N.W. v. Bernstein Mgmt. Co., TP 25,072 (RHC Sept. 22, 2004) (where the Commission held it dismissed an issue because it did not explain an error in the Rent Administrator's decision and other statements were dismissed as too vague to describe an error in the Rent Administrator's decision); Henson v. Bryant, TP 27,514 (RHC Sept. 30, 2003), Steelman v. Uzomah, TP 27,629 (RHC July 3, 2003); Harrison v. Fred A. Smith, TP 25,059 (RHC Mar. 14, 2001) (where the Commission stated that the notice of appeal and two pages of the decision attached to it did not state error in the decision and order). Therefore, the Housing Provider's appeal is dismissed for failure to state an alleged error in the Rent Administrator's decision.

III. THE CONCLUSION

Both the Housing Provider's and Tenant's appeals are dismissed for reasons discussed above.

The motion for expeditious ruling will be decided in a separate order.

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON

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:

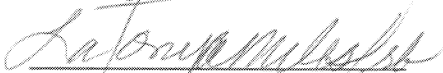
D.C. Court of Appeals
Office of the Clerk
500 Indiana Avenue, N.W.
6th Floor
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing ORDER DISMISSING APPEALS in TP 28,242 was mailed by priority mail, with confirmation of delivery, postage prepaid this 17th day of November, 2005, to:

William S. Bach, Esquire
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