

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
941 North Capitol Street, NE, Suite 9100
Washington, DC 20002
TEL: (202) 442-8167
FAX: (202) 442-9451

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS
2009 JUN 19 P 3: 52

TANYA HUNTE

Tenant/Petitioner,

v.

MARY VIRGINIA PHILLIPS ANDERS

Housing Provider/Respondent

Case No.: RH-TP-06-28805

In re: 400 Massachusetts Avenue, NW
Unit 1017

FINAL ORDER

I. Introduction

On October 4, 2006, Tenant/Petitioner Tanya Hunte filed Tenant Petition (TP) 28,805 against Housing Provider/Respondent Mary Virginia Phillips Anders alleging that Housing Provider violated the Rental Housing Act of 1985¹ as it pertains to rent increases by: increasing Tenant's rent by an amount larger than allowed by law; failing to provide a proper 30-day notice of a rent increase; failing to file proper rent increase forms with the Rental Accommodations and Conversion Division (RACD), Department of Consumer and Regulatory Affairs (DCRA);² charging rent that exceeded the legally calculated rent ceiling for Tenant's rental unit; increasing the rent for Tenant's rental unit while the unit was not in substantial compliance with the housing

¹ Rental Housing Act of 1985 (D.C. Official Code §§ 42-3501.01 *et seq.*) ("Rental Housing Act" or "Act").

² Effective October 1, 2007, the functions of RACD were transferred from DCRA to the Rental Accommodations Division, Department of Housing and Community Development (DHCD). The transfer has no effect on the disposition of this case.

regulations; and failing to register the building in which Tenant's rental unit is located with RACD. Tenant also complained that Housing Provider took retaliatory action against her and served her a notice to vacate that violated section 501 of the Rental Housing Act.³

On November 14, 2007, Housing Provider filed a motion to dismiss each of Tenant's complaints involving rent increases on grounds that the rental unit is exempt from the rent stabilization provisions of the Rental Housing Act, as it is owned by a natural person who owns four or fewer rental units in the District in Columbia and the rental unit is in a building that was constructed after 1975. By Order dated May 19, 2009, I granted Housing Provider's motion and dismissed with prejudice all complaints related to rent increases.⁴ In the May 19, 2009, Order, I also scheduled a hearing for June 10, 2009, on Tenant's complaints that Housing Provider took retaliatory action against her and served her a notice to vacate that violated the Rental Housing Act, as the provisions establishing these complaints are not codified in the Act's rent stabilization subchapter.⁵

When I convened the hearing on June 10, 2009, Housing Provider appeared with counsel, Bernard Gray, Esquire. Tenant did not appear. Housing Provider moved to dismiss this case with prejudice for Tenant's failure to appear to prosecute and because the rental unit is exempt from the rent stabilization provisions of the Rental Housing Act. Based on the record, I am granting Housing Provider's motion.

³ D.C. Official Code § 42-3505.01.

⁴ *Hunte v. Anders*, OAH No. RH-TP-06-28805 (Order Granting Motion to Dismiss Complaints Involving Rent Increases, May 19, 2009).

⁵ *Id.*

II. Findings of Fact

1. The housing accommodation at issue, Unit 1017, is a rental unit within a 256-unit condominium building located at 400 Massachusetts Avenue, NW.
2. On December 4, 2007, Tenant appeared before this administrative court, by telephone, for a hearing on Housing Provider's motion to dismiss Tenant's complaints related to rent increases. At the hearing, Tenant provided "805 15th Street, NW, Suite 100, Washington, DC, 20005" to this administrative court as her mailing address.
3. On May 19, 2009, the Office of Administrative Hearings (OAH) served the parties an Order dismissing Tenant's complaints involving rent increases and scheduling a hearing on Tenant's complaints that Housing Provider took retaliatory action against her and served her a notice to vacate that violated the Rental Housing Act. The hearing was scheduled for June 10, 2009.
4. The Order scheduling the June 10th hearing was served at Tenant's mailing address of record, "805 15th Street, NW, Suite 100, Washington, DC, 20005", which Tenant provided on December 4, 2007. Tenant has not filed a change of address with this administrative court since December 4, 2007.

5. The Order scheduling the June 10th hearing was served on Tenant by U.S. Priority Mail with Delivery Confirmation on May 19, 2009, and delivered to Tenant's mailing address of record on May 20, 2009.⁶
6. On June 10, 2009, this administrative court convened a hearing on TP 28,805 in accordance with the scheduling Order served on Tenant. Tenant did not appear for the hearing or provide any reason for her failure to appear.

III. Conclusions of Law

This matter is governed by the Rental Housing Act of 1985 (D.C. Official Code §§ 42-3501.01 *et seq.*) and implementing rules at 14 District of Columbia Code of Municipal Regulations (DCMR) 4100 - 4300 *et seq.*; the District of Columbia Administrative Procedure Act (D.C. Official Code §§ 2-501 *et seq.*); the Office of Administrative Hearings Establishment Act at D.C. Official Code § 2-1831.03(b-1), which authorizes OAH to hear and decide rental housing cases; and OAH procedural rules (1 DCMR 2800 *et seq.* and 1 DCMR 2920 *et seq.*).

⁶ U.S. Postal Service Track & Confirm Search Results, Label/Receipt Number 0307 3330 0000 8444 6922 (www.usps.com).

Tenant was properly served with notice of the time and place of the hearing in this matter. Notice of the hearing was sent to Tenant's address of record, which she provided.⁷ Notice of a hearing on a tenant petition must be furnished by certified mail or other form of service that assures *delivery*.⁸ The requirement was met. The scheduling Order was served on Tenant by U.S. Priority Mail with Delivery Confirmation. U.S. Postal Service records show that the U.S. Postal Service delivered the order scheduling the hearing to Tenant's address of record on May 20, 2009.⁹ Tenant is required to inform OAH of any change in contact information, as the information of record is deemed conclusively correct and current.¹⁰ Tenant has not filed a change of address.

Despite proper notice served at Tenant's address of record, Tenant failed to appear at the hearing. There is no record evidence of good cause for Petitioner's failure to appear. Moreover, Tenant has failed to provide *any cause* for her failure to appear. Dismissal with prejudice is authorized by OAH Rule 2818.1,¹¹ which provides that:

For failure of the Petitioner to prosecute ... a Respondent may move for dismissal of an action or of any claim against the Respondent, or the presiding Administrative Law Judge may order such dismissal on his or her own motion . . .

⁷ *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443 (D.C. 1990) and *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622 (D.C. 1985) (notice was proper when sent to the party at address provided by the party).

⁸ D.C. Official Code § 42-3502.16 (c). *See Joyce v. District of Columbia Rental Hous. Comm'n*, 741 A.2d 24 (D.C. 1999).

⁹ U.S. Postal Service Track & Confirm Search Results, Label/Receipt Number 0307 3330 0000 8444 6922 (www.usps.com).

¹⁰ 1 DCMR 2807.4.

¹¹ 1 DCMR 2818.1.

. [U]nless otherwise specified, a dismissal under this Section . . . constitutes an adjudication on the merits.

I am granting Housing Provider's motion and dismissing, with prejudice, Tenant's complaints that Housing Provider retaliated against Tenant and served Tenant an improper notice to vacate in violation of the Rental Housing Act for Tenant's failure to prosecute.¹² Tenant's complaints that Housing Provider increased Tenant's rent by an amount larger than allowed by law, failed to provide a proper 30-day notice of a rent increase, failed to file proper rent increase forms with RACD, charged rent that exceeded the legally calculated rent ceiling for the Tenant's rental unit, increased the rent for Tenant's rental unit while the unit was not in substantial compliance with the housing regulations, and failed to register the building in which Tenant's rental unit is located with RACD are dismissed with prejudice because Tenant's rental unit is exempt from the rent stabilization provisions of the Rental Housing Act.¹³

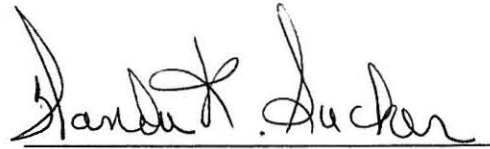
Therefore, it is this 19th day of June 2009:

ORDERED, that that Case No. RH-TP-06-28805 is hereby **DISMISSED WITH PREJUDICE**; and it is further;

¹² 1 DCMR 2818.1.

¹³ *Hunte v. Anders*, OAH No. RH-TP-06-28805 (Order Granting Motion to Dismiss Complaints Involving Rent Increases, May 19, 2009).

ORDERED, that the reconsideration and appeal rights of any party aggrieved by this Order are set forth below.

A handwritten signature in black ink, appearing to read "Wanda R. Tucker", written over a horizontal line.

Wanda R. Tucker
Administrative Law Judge

MOTIONS FOR RECONSIDERATION

Any party served with a Final Order may file a motion for reconsideration within ten (10) days of service of the Final Order in accordance with 1 DCMR 2937. When the Final Order is served by mail, five (5) days are added to the 10 day period in accordance with 1 DCMR 2811.5.

A motion for reconsideration shall be granted only if there has been an intervening change in the law; if new evidence has been discovered that previously was not reasonably available to the party seeking reconsideration; if there is a clear error of law in the final order; if the Final Order contains typographical, numerical, or technical errors; or if a party shows that there was a good reason for not attending the hearing.

The Administrative Law Judge has thirty (30) days to decide a motion for reconsideration. If a timely motion for reconsideration of a Final Order is filed, the time to appeal shall not begin to run until the motion for reconsideration is decided or denied by operation of law. If the Judge has not ruled on the motion for reconsideration and 30 days have passed, the motion is automatically denied and the 10 day period for filing an appeal to the Rental Housing Commission begins to run.

APPEAL RIGHTS

Pursuant to D.C. Official Code §§ 2-1831.16(b) and 42-3502.16(h), any party aggrieved by a Final Order issued by the Office of Administrative Hearings may appeal the Final Order to the District of Columbia Rental Housing Commission within ten (10) business days after service of the Final Order, in accordance with the Commission's rule, 14 DCMR 3802. If the Final Order is served on the parties by mail, an additional three (3) days shall be allowed, in accordance with 14 DCMR 3802.2.

Additional important information about appeals to the Rental Housing Commission may be found in the Commission's rules, 14 DCMR 3800 et seq., or you may contact the Commission at the following address:

District of Columbia Rental Housing Commission
941 North Capitol Street, N.E.
Suite 9200
Washington, D.C. 20002
(202) 442-8949

Certificate of Service:

**By Priority Mail / Delivery Confirmation
(Postage Paid):**

Tanya Hunte
805 15th Street, NW
Suite 100
Washington, D.C. 20005

Bernard A. Gray, Esq.
2009 18th Street, S.E.
Washington, D.C. 20020-4201

By Interagency Mail

District of Columbia Rental Housing Commission
941 North Capitol Street, N.E.
Suite 9200
Washington, DC 20002

Keith Anderson
Acting Rent Administrator
Rental Accommodations Division
Department of Housing and Community Development
1800 Martin Luther King Avenue, SE
Washington, DC 20020

I hereby certify that on 6-19, 2009 this document was caused to be served upon the above-named parties at the addresses and by the means stated.

Benedicta Rhames
Clerk / Deputy Clerk