

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
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DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

2009 SEP -8 PM 10: 29

LAKESHIA BROWN,
Tenant/Petitioner,

v.

BOZZUTO MANAGEMENT,
Housing Provider/Respondent.

Case No.: RH-TP-08-29447

In re: 1400 Irving Street, NW, Unit 201

FINAL ORDER

I. Introduction

An unusual sequence of events underlies Housing Provider's motion to dismiss this case (the Motion). On January 7, 2009, only Tenant/Petitioner appeared for the scheduled hearing. Approximately a month later, Housing Provider filed the Motion arguing that it had not received notice of the hearing and that the action is barred by a consent judgment between the parties in the Landlord and Tenant Branch of Superior Court, executed on January 27, 2009. To allow the parties to be heard on the Motion, I scheduled a status conference for August 14, 2009. Only counsel for Housing Provider appeared. Tenant/Petitioner did not appear for the conference and has not opposed the Motion.

II. Findings of Fact

1. The Tenant filed her Tenant Petition (TP) in this case on September 26, 2008, and did not check any boxes in part 3, the Tenant complaint section. Instead, she attached a typed letter to Housing Provider responding to a Notice to Correct a Lease Violation.

Responding to the allegation that she had not paid rent, Tenant described a rodent problem.

2. On November 18, 2008, I sent a Case Management Order (CMO) scheduling a January 7, 2009, hearing at the Office of Administrative Hearings (OAH) to the parties, at the addresses Tenant provided in her petition. The U.S. Postal Service confirmed by receipt number 0303 2460 0001 2370 6021 that it delivered the CMO to Bozzuto Management at 1400 Irving Street, NW, Unit M.
3. Tenant/Petitioner appeared at the hearing. No one appeared on the Housing Provider's behalf. I proceeded with the hearing in the Housing Provider's absence and Tenant and her witness, John Hamilton, testified concerning rodent infestation in her apartment.
4. On January 27, 2009, the Parties entered into a Consent Judgment Praecipe in Superior Court (Exhibit D to the Motion). That agreement followed an August 7, 2008, Landlord and Tenant complaint Housing Provider had filed against Tenant. She answered the complaint with several assertions, including that Housing Provider failed to correct serious housing code violations and retaliated against her.
5. Housing Provider filed the Motion to Dismiss on February 6, 2009.
6. With the Motion, Housing Provide filed an affidavit from Vanessa Gomez, property manager employed by Bozzuto Management to manage the Property at 1400 Irving Street, NW. She asserted that there is no Unit M at the Property and that she never

received notice of the hearing. She only learned about it after the hearing when Tenant asked why she had not attended.

III. Discussion and Conclusions of Law

Housing Provider argues that the consent judgment in Superior Court bars this claim. In support, it relies on the doctrine of *res judicata* or *claim preclusion*. When a valid final judgment has been entered on the merits, the parties, or those in privity with them, are barred, in a *subsequent* proceeding, from relitigating the same claim or *any claim that might have been raised*. *Washington Medical Center, Inc., v. Holle*, 573 A.2d 1269, 1280-81 (D.C. 1990) (emphasis added). The rationale is that the judgment embodies an adjudication of all the parties' rights arising out of the transaction involved. *Id.* Therefore, the *prior* adjudication "bars" claims actually raised, and those which the litigants failed to raise are said to "merge" into the prior judgment. *Id.*

Housing Provider, the party seeking dismissal based on *res judicata*, must prove (1) the claim was adjudicated finally; (2) the *earlier* litigation was based on the same cause of action; and (3) the parties are the same or in privity. *Shin v. Portals Confederation Corp.*, 728 A.2d at 618. The claims and defenses raised before the Landlord/Tenant branch were the issues of back-rent, housing code violations and retaliation. A settlement between the parties was a final adjudication.

If the tenant petition at OAH had been filed *after* the consent judgment in Superior Court, Housing Provider would prevail on its *res judicata* defense. But an Order had not been issued in this proceeding when the Parties entered into their consent agreement in the Landlord and Tenant action. Tenant litigated her tenant petition first, and it was, therefore, not a subsequent

proceeding. The parties could have specifically agreed to settle the rental housing petition at the same time, but did not do so. Hence, neither *res judicata* nor a specific settlement can justify dismissing this claim.

A second basis for dismissal, however, is present in this case. Tenant filed the Tenant Petition on which she provided an address for herself and Housing Provider. She testified at the hearing in January. Yet, she never responded to Housing Provider's Motion to Dismiss and did not appear for the status conference as ordered. Perhaps Tenant believed that the consent order in the Landlord and Tenant action settled this case too. At the conference I held, both parties had an opportunity to explain how this action and the Landlord and Tenant action were related. Tenant would have learned that Housing Provider did not receive notice of the hearing. Issues of reopening this case to allow Housing Provider to present its defense, or dismissal based on the Landlord and Tenant action would have been considered. Tenant's absence from the conference prevented those considerations. Hence, this case is dismissed because Tenant failed to comply with my Order that she appear for the status conference and failed to prosecute this case. OAH Rule 2818.1 and 2818.3.

Finally, Housing Provider argues that invalid service in this case was a denial of due process. It challenges an OAH practice of relying on a housing provider address the tenant writes on her tenant petition, suggesting that reviewing filings with the D.C. Corporations Division would be more reliable. I am satisfied that Housing Provider did not receive notice of the hearing. Since no Final Order had yet been issued, no prejudice falls to Housing Provider. In view of my disposition on the merits of the Motion, it is not necessary to reach Housing Provider's claim that service was invalid.

This Final Order will not take effect until fourteen days after the date of service. Within that time Tenant/Petitioner may file a motion to vacate this Final Order upon a showing of good cause why the case should not be dismissed. 1 DCMR 2818.2.


IV. Order

Therefore, it is this 8th day of September, 2009:

ORDERED, that Case No. RH-TP-08-29447 is **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that the dismissal will take effect fourteen (14) days after service of this Final Order unless Tenant/Petitioner files a motion to vacate this Final Order within that period upon a showing of good cause; and it is further

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


Margaret A. Mangan
Administrative Law Judge

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, in accordance with the Commission's rule, 14 DCMR 3802. The ten (10) day limit shall begin to run when the order becomes final. 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, NE
Suite 9200
Washington, D.C. 20002
(202) 442-8949

By Priority Mail with Delivery Confirmation (Postage Paid):

Lakeshia Brown
1400 Irving Street, NW
Unit 201
Washington, DC 20010

Richard W. Luchs, Esquire
Roger D. Luchs, Esquire
1620 L Street, NW Suite 900
Washington, DC 20036-5605

By Inter-Agency Mail:

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

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

I hereby certify that on 9-9, 2009, this document was caused to be served upon the above-named parties at the addresses and by the means stated.


Clerk / Deputy Clerk