

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 3788

In re: 2480 16th Street, N.W.

Ward Three (3)

HAGNER MANAGEMENT CORPORATION
Housing Provider/Appellant/Cross-Appellee

v.

BENOIT BROOKENS, et al.
Tenants/Appellees/Cross-Appellants

**ORDER ON MOTIONS TO ESTABLISH ESCROW ACCOUNT AND TO
DISMISS APPEAL**

October 12, 2001

YOUNG, COMMISSIONER: This case is on appeal from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Office of Adjudication (OAD), to the Rental Housing Commission (Commission), pursuant to the Rental Housing Act of 1985, D.C. Law 6-10, D.C. OFFICIAL CODE § 42-3501.01 et seq.,¹ and the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE § 2-501, et seq.² The regulations, 14 DCMR § 3800 et seq., also apply.

¹ The “supersedure” section of the 1985 Act, D.C. OFFICIAL CODE § 42-3509.03, provides:

[T]his chapter shall be considered to supersede the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, and the Rental Housing Act of 1980, except that a petition filed with the Rent Administrator under the Rental Housing Act of 1980 shall be determined under the provisions of the Rental Housing Act of 1980. (emphasis added.) See Marshall v. District of Columbia Rental Hous. Comm’n, 533 A.2d 1271 (D.C. 1987).

² The Council of the District of Columbia issued the new “D.C. Official Code” replacing the D.C. Code in 2001.

I. PROCEDURAL HISTORY

The instant motion in this case is before the Commission pursuant to a decision and order issued by Hearing Examiner Gerald Roper in Brookens v. Hagner Management Corp., TP 3788 (OAD Feb. 14, 2001). The OAD decision and order was issued in response to a remand from the Commission in Hagner Management Corp. v. Brookens, TP 3788 (RHC Feb. 4, 1999). The complete procedural history of this case prior to the instant motions and responses thereto is contained in four earlier decisions and orders; they are Brookens v. Hagner, TP 3788 (OAD May 22, 1984), Hagner v. Brookens, TP 3788 (RHC Aug. 9, 1988), and Brookens v. Hagner, TP 3788 (OAD Aug. 30, 1995), and the Commission's February 4, 1999, decision and order.

II. MOTION TO ESTABLISH ESCROW ACCOUNT

On February 28, 2001, Hagner Management Corporation (Hagner), the housing provider, filed with the Commission a motion requesting that the Commission establish an escrow account and to dismiss its appeal, if the motion was granted. The housing provider/appellant moved the Commission to "enter an order authorizing and directing the Housing provider [sic], as a condition for dismissal of the appeal in this case, to establish an escrow account for the purpose of the payment of certain awards made by the Rent Administrator in decision [sic] below." Motion of Housing Provider/Appellant to Establish Escrow Account and to Dismiss Appeal, at 1. In its Memorandum of Points and Authorities in Support of Motion of Housing Provider/Appellant to Establish Escrow Account and to Dismiss Appeal, the housing provider states regarding its pending appeal of the February 14, 2001, OAD decision and order:

Although [the] Housing Provider believes that the issues raised in its appeal are meritorious, [the] Housing Provider is prepared to dismiss its appeal provided,

and on the condition, that the Commission exercise its authority to order the establishment of an escrow account for the purpose of payment of the awards granted by the Rent Administrator to 27 persons:

K. Hagen, Apt. 107; W. Conley, Apt. 113; G. Petcavage, Apt. 114; L. Salmon, Apt. 133; R. Randolph, Apt. 135; S. Wheeler, Apt. 205; C. Stribling, Apt. 211; Kirkwood/Harvest, Apt. 215; P. Pollet, Apt. 217; D. Moss, Apt. 230; Williams/Gates, Apt. 235; M. Washington, Apt. 312; C. Pfanschmidt, Apt. 318; J. Branch, Apt. 414; T. Doke, Apt. 528; B. Brookens, Apt. 532; T. Exton, Apt. 535; L. Bramble/W. Cora, Apt. 537; B. Clegg, Apt. 735; A. Garibaldi, Apt. 730; G. Cohen, Apt. 739; M. Henry, Apt. 841; B. Limber, Apt. 844; A. Gandini, Apt. 908; M. Huffman, Apt. 914; C. Gibson, Apt. 919; K. Johnson, Apt. 926.

Housing Provider/Appellant's Memorandum of Points and Authorities at 1-2.

The memorandum further stated:

Housing Provider shall not be required to escrow funds for the awards to the following six persons: A. Hollins, Apt. 116; S. Van Gales, Apt. 341; Anne Cooke, Apt. 719; B. Durant, Apt. 623; B. Morten, Apt. 701; and M. Barber, Apt. 922. Based on the order of the Superior Court of the District of Columbia in the case Hagner Management Corporation v. Maureen Abbott, et al., Civil Action No. LT 97220-81, a copy of which is attached hereto, Housing Provider is entitled as a matter of law to offset against 'the awards made to such six tenants up to \$135,000.00, which is more than sufficient to offset the awards to those tenants. Accordingly, the amount to be placed in escrow will be \$120,361.83.

Id. at 4.

III. DISCUSSION OF MOTION TO ESTABLISH ESCROW ACCOUNT

In his findings of fact under the heading "Computation of Refund/Damages," the hearing examiner stated:

Based on the evidence, 33 tenants were overcharged rent during the period June 1, 1977 to June 18, 1981 and are entitled to a rent refund for the rent overcharge, interest on the overcharge for the violation period, and treble damages on the overcharge (excluding interest).

Brookens v. Hagner Management Corp., TP 3788 (OAD Feb. 14, 2001) at 14.

In an amendment to the Motion of Housing Provider/Appellant to Establish Escrow Account and to Dismiss Appeal, filed with the Commission on March 12, 2001,

the housing provider argues, in a review of a court approved Stipulation of Settlement in Hagner Management Corp. v. Abbott, LT 97220-81, that nine (9) additional tenants in seven (7) units were affected by the settlement agreement permitting the housing provider to offset the awards granted them in the OAD decision and order of February 14, 2001. The housing provider contends that an escrow account in the amount of \$88,849.56, is sufficient to insure payment to the remaining twenty tenants listed in its attachment to the motion. The housing provider relies on paragraph four (4) of the Stipulation of Settlement which provides:

In the event any final judgment is entered against the Landlord in the case of T/P 3788 after all appeals, Landlord shall be entitled to a credit against the amount of any such judgment in T/P 3788, in the sum of \$135,000.00 (which represents the unpaid rent and air conditioning charge arrearages owed by the group of tenants listed on Exhibit B and which Landlord has agreed to forego pursuant to paragraph 1 hereof), for a total credit against the amount of any such judgment in the sum of \$135,000.00. Tenant hereby agrees and consents to such credit. It is expressly acknowledged and agreed that the aforesaid credit shall be applied to the amount of any final judgment entered in T/P 3788 and any appeals, to the extent same is allocable to the tenants listed in Exhibit B.

Hagner Management Corp. v. Abbott, LT 97220-81 (Apr. 11,

1983).³ Based upon the list of tenants provided with the amended Motion of Housing Provider/Appellant to Establish Escrow Account and to Dismiss Appeal, the housing provider argues that the awards made to the following tenants, by the decision of the Rent Administrator, should be deducted from the proposed escrow account as offsets: A. Hollins, apartment 116, C. Stribling, apartment 211, Kirkwood and Harves apartment 215, P. Polett, apartment 217, Wilkens and Gates, apartment 235, M. Washington, apartment 312, C. Pfanschmit, apartment 318, S. Van Gales, apartment 341, T. Exton,

³ The Commission notes that the record containing the Stipulation of Settlement does not contain the exhibit referred to in the settlement agreement, nor is it attached to the housing provider's motion requesting establishment of the escrow account.

apartment 535, B. Durant, apartment 623, B. Morten, apartment 701, A. Cooke, apartment 719 and M. Barber, apartment 922.

In opposition to the Housing Provider's amended motion filed with the Commission on March 6, 2001, the tenants/appellees argue:

The Landlord proposes to post only \$120,361.83 for an award entered February 14, 2001, in the amount of \$142,535.04. The proposed escrow, is prima facie inadequate and does not cover the full amount of the award. Secondly, the Landlord's proposal excludes six tenants from the refund plan for no legal reason. The Landlord refers—generally to an April 11, 1993 [sic], settlement agreement between the tenants and the landlord in Hagner Management Corporation v. Maureen Abbott, et al., LT 97220-81. However, the agreement does not provide a basis for excluding any of these six tenants from any rent refund award. Paragraph 6 of the illegible copy of the April 11, 1983, settlement agreement provides that 'all funds held in escrow by plaintiff...shall be released to the landlord in full satisfaction of any rent due and owing between the parties of the agreement through April 30, 1983.

Tenant's Response to Landlord's Motion to Post Escrow and Withdraw Appeal at 2.

The Commission is an administrative appellate body with the limited authority to review issues brought before the Rent Administrator and to review the record established below. See Meier v. District of Columbia Rental Hous. Comm'n, 372 A.2d 566 (D.C. 1977). Further, the Commission may decline to address an issue that is raised for the first time on appeal. DeLavey v. District of Columbia Rental Hous. Comm'n, 411 A.2d 354 (D.C. 1979). The nature of the housing provider's amended escrow account request would require that the Commission settle an issue which was not the subject of an appeal to the Rent Administrator, that is, whether the 15 tenants named in the Amended Motion of Housing Provider/Appellant to Establish Escrow Account and to Dismiss Appeal should be excluded from receiving rent refunds ordered by the Rent Administrator's decision and order. This issue was not raised on appeal to the Commission by the housing provider, nor does the housing provider reference a Rent Administrator decision

which adopted its assertion that the refunds to the tenants enumerated in its motion could properly be offset. The Commission will not consider issues not raised at the RACD, nor will it consider issues not raised on appeal. See Bernstein v. Estrill, TP 21,792 (RHC Aug. 12, 1991), Terrell v. Estrada, TP 20,007 (RHC May 30, 1991), citing Bealer v. District of Columbia Rental Hous. Comm'n., 472 A.2d 901 (D.C. 1984). Further the Commission's rule at 14 DCMR § 3807.5, provides that, "[t]he Commission shall not receive new evidence on appeal." Therefore, the Commission declines to rule on this issue.

Finally, by decision and order dated September 28, 2001, in Hagner Management Corp. v. Brookens, TP 3788 (RHC Sept. 28, 2001), the Commission issued its decision on the appeal issues raised by the parties. Therefore the housing provider's motion to establish an escrow account and dismiss its appeal is denied as moot. See McChesney v. Moore, 78 A.2d 389 (D.C. 1951).

SO ORDERED.


RONALD A. YOUNG, COMMISSIONER

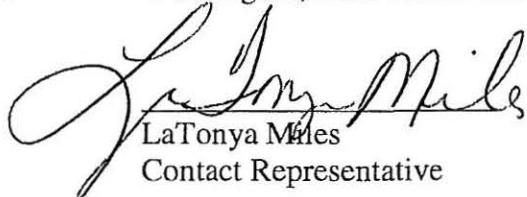
CERTIFICATE OF SERVICE

I certify that a copy of **ORDER ON HOUSING PROVIDER'S MOTION TO ESTABLISH ESCROW ACCOUNT** and **TO DISMISS APPEAL** in TP 3788 was mailed certified mail postage prepaid this, 12th day of October, 2001, to the following persons:

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