

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-06-28,830; RH-TP-06-28,835

In re: 2714 Quarry Road, N.W., Apartment B-1

Ward One (1)

CARMEL PARTNERS, INC. d/b/a QUARRY II, LLC
Housing Provider/Appellant

v.

MICHAEL JOSEPH LEVY
Tenant /Appellee

ORDER ON MOTION FOR CONTINUANCE

March 15, 2013

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from a decision and order issued by the Office of Administrative Hearings (OAH) based on petitions filed in the Rental Accommodations and Conversion Division (RACD), Housing Regulation Administration (HRA), of the District of Columbia Department of Consumer and Regulatory Affairs (DCRA).¹ 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- 2-510 (2001 Supp. 2008), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

¹ The Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from the RACD pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.01, -1831.03(b-1)(1) (2001 Supp. 2005). The functions and duties of the RACD of DCRA were transferred to the Department of Housing and Community Development (DHCD) by the Fiscal Year Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (September 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (2001 Supp. 2008)).

I. PROCEDURAL HISTORY

On November 6, 2006, Tenant/Appellee, Michael Joseph Levy (Tenant), residing at Apartment B-1 of 2714 Quarry Road, N.W. (Housing Accommodation), filed Tenant Petition (TP) RH-TP-06-28,830 (Tenant Petition) with the Rent Administrator, claiming that the Housing Provider/Appellant, Carmel Partners, Inc. d/b/a Quarry II, LLC (Housing Provider), violated the Act as follows: (1) the Housing Provider implemented a rental increase which was larger than the amount of increase permitted by the Act; (2) the Housing Provider failed to file proper rent increase forms with RACD; (3) the rent charged exceeded the legally calculated rent ceiling for the rental unit at issue;² (4) the rent ceiling filed with RACD for the Housing Accommodation is improper; (5) the Housing Provider increased the Tenant's rents when the rental unit was not in substantial compliance with the D.C. Housing Regulations; (6) the Housing Provider, manager or other agent of the Housing Provider has violated the provisions of D.C. OFFICIAL CODE § 42-3502.05(d) & (h) (2001 SUPP. 2008). Tenant Petition at 1 – 8; R1. at 24 - 31.³

On March 23, 2007, the Administrative Law (ALJ) issued a Case Management Order (CMO) which set a hearing date on April 17, 2007. R1. at 37 - 43. On April 11, 2007, the ALJ issued an order converting the hearing scheduled for April 17, 2007 into a status hearing. R1. at 75-79. On April 26, 2007, the ALJ set a new hearing date for June 5, 2007. R1. at 96-97; R2. at 62-63.

² The “Rent Control Reform Amendment Act of 2006” amended the Act by eliminating “rent ceilings”, and, in their place, substituting the term “rent charged.” D.C. OFFICIAL CODE § 42-3502.06(a) (2001 Supp. 2008). See, D.C. Law 16-145, §§ 2(a) & (c), 53 D.C. Reg. at 4889, 4890 (2006).

³ On November 13, 2006, Tenant additionally filed an inquiry with the Rent Administrator which the Rent Administrator construed as another tenant petition, RH-TP-06-28,835. Record for RH-TP-06-28,835 at 63. In this Decision and Order, any reference to the record of RH-TP-06-28,830 will be referred to as “R1.” Any reference to the record of RH-TP-06-28,835 will be referred to as “R2.” On April 26, 2007, the ALJ issued an order consolidating the two tenant petitions. R1. at 96 – 97; R2. at 62 - 63. Therefore, references to the record following consolidation will be denoted as “CR.”

On May 3, 2007, the Housing Provider filed "Housing Provider/ Respondent's Motion for Summary Judgment." See Motion for Summary Judgment; CR. at 148 - 150. The Housing Provider also filed a Memorandum in Support of its Motion for Summary Judgment with exhibits. CR. at 15 – 147. The Housing Provider claimed in its Memorandum that it was entitled to judgment as a matter of law because it had filed a valid claim form for exemption from the Act (Registration/Claim of Exemption Form). CR. at 141 – 143.

The grounds for the exemption are contained in D.C. OFFICIAL CODE §§ 42-3502.05(a)(2) (2001), as follows:

(a) Sections 42-3502.05(f) through 42-3502.19, except § 42-3502.17, shall apply to each rental unit in the District [of Columbia] except: . . .

(2) Any rental unit in a newly constructed housing accommodation for which the building permit was issued after December 31, 1975, or any newly created rental unit, added to an existing structure or housing accommodation and covered by a certificate of occupancy for housing use issued after January 1, 1980, provided, however, that this exemption shall not apply to any housing accommodation the construction of which required the demolition of an housing accommodation subject to this chapter, unless the number of newly constructed rental units exceeds the number of demolished rental units; . . .

The ALJ held an evidentiary hearing on these matters on June 12, 2007, which was continued to July 13, 2007. CR. at 366. On December 12, 2007, the ALJ issued her Final Order, Levy v. Carmel Partners, Inc. d/b/a Quarry II, LLC, RH-TP-06-28,830 & RH-TP-06-28,835 Consolidated (OAH Dec. 12, 2007) (Final Order). See CR. at 359 - 367. The ALJ determined that (1) the Tenant's apartment met the requirements for an exemption from the rent stabilization portions of the Act pursuant to D.C. OFFICIAL CODE § 42-3502.05(a)(2) (2001) from the beginning of the Tenant's occupation of the Housing Accommodation, and (2) the exemption extended to all of the claims contained in the Tenant's petition. The ALJ thus dismissed all of the Tenant's claims.

On December 23, 2008, the Tenant filed a notice of appeal with the Commission. On March 19, 2012, the Commission issued a Decision and Order. Levy v. Carmel Partners, Inc., d/b/a Quarry, II, LLC, RH-TP-06-28,830 & RH-TP-06-28,835 (RHC Mar. 19, 2012) (Decision and Order). The Commission reversed the ALJ's holding that the Housing Accommodation is exempt from the Act pursuant to D.C. OFFICIAL CODE §§ 42-3502.05(a)(2) (2001), and remanded the case to OAH for further proceedings. On April 18, 2012, the Commission denied the Housing Provider's Motion for Reconsideration.

On August 15, 2012, OAH issued a Final Order upon Remand (Remand Order), which rolled back the Tenant's rents and ordered a rent refund to the Tenant. Levy v. Carmel Partners, Inc. d/b/a Quarry II, LLC, RH-TP-06-28,830 & RH-TP-06-28,835 Consolidated (OAH Aug. 15, 2007) (Remand Order). On August 23, 2012, the Housing Provider filed a Notice of Appeal from the Remand Order with the Commission. On August 28, 2012, the Tenant filed a cross-appeal. The Commission scheduled an appellate hearing on Thursday, March 21, 2013 at 2:00 p.m. (Hearing Date).

On March 13, 2013, the Housing Provider filed Housing Provider's Motion for Continuance of Hearing (Motion for Continuance). The Housing Provider contends that the current briefing schedule does not require the Tenant to file a Response Brief by the Hearing Date under Commission Regulations, *see* 14 DCMR § 3802.8 (2004), and will thus not permit the Housing Provider to review and respond to any Response Brief from the Tenant. Motion for Continuance at 1.

On March 14, 2013, the Tenant filed Tenant Opposition to [Housing] Provider's Motion

for Continuance of 3-21-13 RHC Hearing (Motion in Opposition). The Tenant asserted as follows:

[T]enant is filing neither a brief nor a reply brief. Thus there will be no reply brief forthcoming after the scheduled Hearing date, nor is there the need for Counsel's caveat for the right to respond to my brief.

Motion in Opposition at 1.

According to 14 DCMR § 3815.1 (2004), in relevant part:

Any party may move to request a continuance of any scheduled hearing or for extension of time to file a pleading, other than a notice of appeal, or leave to amend a pleading if the motion is served on opposing parties and the Commission at least five (5) days before the hearing or the due date . . .

According to 14 DCMR § 3815.2 (2004):

Motions shall set forth good cause for the relief requested.

According to 14 DCMR § 3815.3 (2004):

Conflicting engagements of counsel, absence of counsel, or the employment of new counsel shall not be regarded as good cause for continuance unless set forth promptly after notice of the hearing has been given.

Administrative tribunals "must be, and are, given discretion in the procedural decisions made in carrying out their statutory mandate." Prime v. D.C. Dep't of Pub. Works, 955 A.2d 178 (D.C. 2008) (*quoting* Ammerman v. D.C. Rental Accommodations Comm'n, 375 A.2d 1060, 1063 (D.C. 1977)). Continuances are committed to the sound discretion of the Commission. Prime, 955 A.2d at 178. *See also* King v. D.C. Water and Sewer Auth., 803 A.2d 966, 968 (D.C. 2002).

As noted *supra*, the Housing Provider contends that the current briefing schedule does not require the Tenant to file a Response Brief by the Hearing Date under Commission

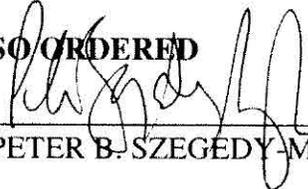
Regulations, *see* 14 DCMR § 3802.8 (2004), and will thus not permit the Housing Provider to review and respond to any Response Brief from the Tenant. Motion for Continuance at 1. The Tenant avers that he will not be filing a Response brief either before or after the Hearing Date. Motion in Opposition at 1.

Based upon its review of the Housing Provider's and the Tenant's respective motions,, the Commission denies the Housing Provider's Motion for Continuance because of (1) the lack of any apparent prejudice to either party because of the denial of the Motion for Continuance , (2) the lack of any evidence of less than "good faith" by the Tenant in averring that he will not file a Response Brief in this appeal, and (3) the lack of any evidence that denying the Motion for Continuance would in any way impair the Commission's interest in providing each party a full and fair opportunity to appear before the Commission regarding the appeal. *See, e.g., Taylor v. Cummings*, RH-TP-08-29,345 (RHC June 2, 2011). In light of the Tenant's statement denying his filing of a Response Brief in this appeal, the Commission determines that the Housing Provider's Motion for Continuance lacks the requisite "good cause" under the Act to compel the Commission to grant a continuance of the hearing in this appeal.

The Commission hereby denies the Housing Provider's Motion for Continuance, and will proceed to hold a hearing in this appeal on the originally scheduled Hearing Date [Thursday, March 21, 2013 at 2:00 p.m.] The scheduled hearing will be at the Commission's offices,

located at Suite 1140N, 441 4th Street, N.W., Washington, D.C. The Commission will not grant any further continuance to either party except under extraordinary circumstances.

SO ORDERED



PETER B. SZEGEDY-MASZAK, CHAIRMAN

JUDICIAL REVIEW

Pursuant to DC 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:

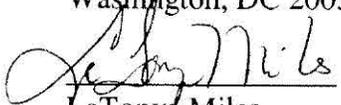
D.C. Court of Appeals
Office of the Clerk
430 E. Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER ON MOTION FOR CONTINUANCE** in RH-TP-10-29,840 was mailed, postage prepaid, by first class U.S. mail on this **15th day of March, 2013** to:

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