

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-07-29,084

In re: 500 23rd Street, N.W., Unit B908

Ward Two (2)

JOHN ANTHONY
Tenant/Appellant

v.

COLUMBIA PLAZA APARTMENTS
Housing Provider/Appellee

ORDER DENYING MOTION FOR RECONSIDERATION

May 6, 2013

PER CURIAM. This case is on appeal to the Rental Housing Commission (Commission) from a final order issued by the Office of Administrative Hearings (OAH), based on a petition filed in the Rental Accommodations Division (RAD) of the District of Columbia Department of Housing and Community Development (DHCD).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), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

¹ OAH assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversions Division (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 were transferred to 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 October 29, 2010, OAH issued a final order in this matter, Anthony v. Columbia Plaza Apartments, RH-TP-07-29,084 (OAH Oct. 29, 2010). On April 28, 2011, the Housing Provider filed a notice of appeal (Notice of Appeal) with the Commission. See Notice of Appeal.

On February 19, 2013, the Commission issued an order dismissing the Notice of Appeal (Order Dismissing Appeal) because the Tenant failed to file an appeal within the mandatory and jurisdictional time limits set forth in 14 DCMR § 3802.2 (2004). See Chen v. Moy, TP 29,340 (RHC Mar. 27, 2012) at 3; (citing United States v. Robinson, 361 U.S. 209 (1960); Yu v. D.C. Rental Hous. Comm'n, 505 A.2d 1310 (D.C. 1986); Totz v. D.C. Rental Hous. Comm'n, 474 A.2d 827 (D.C. 1974); Pinnacle Realty Mgmt. v. Doyle, TP 27,067 (RHC Aug. 8, 2008); Haka v. Gelman Mgmt Co., TP 27,442 (RHC Feb. 9, 2006)); see also Joyce v. D.C. Rental Hous. Comm'n, 741 A.2d 24, 27 (D.C. 1999) (“failure to appeal in time deprives the RHC of jurisdiction”); Dawson v. A. J. Edwards Realty, TP 29,153 (RHC Mar. 24, 2009) at 3; Haendel v. Budd, TP 27,598 (RHC May 21, 2007), at 2; Freeman v. Hamilton, TP 28,282 (RHC Jan. 17, 2006) at 2; C.L.H. Props. v. Torain, TP 24,817 (RHC July 17, 2000) at 3-4; Gales v. Mitchell, TP 29,902 (RHC Dec. 11, 2012)) at 7.

On April 19, 2013, the Tenant filed a document entitled “Motion To Reissue Order of February 19, 2013” with the Commission, in which the Tenant requests the Commission “set aside” the Order Dismissing Appeal for the following reasons:

1. The Tenant/Appellant’s Counsel never received the Court’s Order via the mail.

2. Tenant/Appellant's Counsel was notified of the RHC Order at a status conference before the Superior Court, Landlord and Tenant Branch on April 12, 2013.
3. Tenant/Appellant's Counsel during his investigation discovered the Office of Planning did not certify the Order had been mailed.

See Motion To Reissue Order of February 19, 2013 at 1.

II. DISCUSSION

The Tenant labeled the document filed on April 19, 2013 as a "Motion To Reissue Order." The Act does not permit a "Motion To Reissue Order" arising from a dismissal order. However, the text of the Order Dismissing Appeal does allow for a "Motion for Reconsideration" pursuant to 14 DCMR § 3823 (2004). See Order Dismissing Appeal at 6. Therefore, the Commission will construe the Tenant's "Motion To Reissue Order" as a motion for reconsideration. See Barnes-Mosaid v. Zalco Realty, Inc., TP 29,316 (RHC Sept. 28, 2012); Sindram v. Tenacity Group, TP 29,094 (RHC Mar. 19, 2012) (construing a "motion for modification or reconsideration" as a motion for reconsideration); Jones v. Tenants of 3335 C Street, S.E., CI 20,009 (RHC Feb. 1, 1988) at n. 4; Burton v. Davis, TP 11,809 (RHC Dec. 5, 1986) at n. 1.

The Commission's rule on reconsideration provides: "Any 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; provided, that an order issued on reconsideration is not subject to reconsideration." 14 DCMR § 3823.1 (2004). The Tenant should have filed his motion for reconsideration, pursuant to 14 DCMR § 3823.1 (2004), by March 8, 2013 – namely, within ten (10) days of the receipt of the Order Dismissing Appeal sent by first class mail, with an additional three (3) days to account for mail delivery. See also 14 DCMR

§§ 3816.5 and 3912.5 (2004).² The substantial evidence in the record indicates that the Tenant filed his reconsideration motion on April 19, 2013, more than five (5) weeks after the date required by the Act. Under the Act, time limits are mandatory and jurisdictional. See Barnes-Mosaid, TP 29,316; see also United States v. Robinson, 361 U.S. 209 (1960); Yu, 505 A.2d at 1310; Totz, 474 A.2d at 827; Doyle, TP 27,067; Haka, TP 27,442. The Commission thus determines that the Tenant's Motion for Reconsideration was untimely filed.

However, the Tenant alleges in his Motion for Reconsideration that he never received the Order Dismissing Appeal. Under such circumstances, where a party alleges that he did not receive an order from the Commission, we will consider factors relating to the mailing of the order. See, e.g., Barnes-Mosaid, TP 29,316; Green v. Eva Realty, TP 29,118 (Sept. 4, 2009); see also Radwan v. D.C. Rental Hous. Comm'n, 683 A.2d 478, 481 (D.C. 1996).

The Commission is guided by a number of considerations. See Barnes-Mosaid, TP 29,316; Green, TP 29,118; Radwan, 683 A.2d at 481. There arises a presumption of receipt if the Commission properly mailed the Order Dismissing Appeal. See Barnes-Mosaid, TP 29,316; Green, TP 29,118; Foster v. District of Columbia, 497 A.2d 100, 102 n.10 (D.C. 1985); Allied Am. Mut. Fire Ins. Co. v. Pajze, 143 A.2d 508, 510 (D.C. 1958). The Order Dismissing Appeal will be considered properly mailed if the record indicates that it was mailed to the parties at their correct addresses. See Barnes-Mosaid, TP 29,316; Green, TP 29,118; Wofford v. Willoughby Real Estate, HP 10,687 (RHC Apr. 1, 1987) at 2. Once the presumption of receipt arises, "the party claiming non-

² According to 14 DCMR §§ 3816.5 and 3912.5 (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."

delivery has the burden of rebutting the presumption with a preponderance of evidence to the contrary.” See Barnes-Mosaid, TP 29,316; Green, TP 29,118; Wofford, HP 10,687.

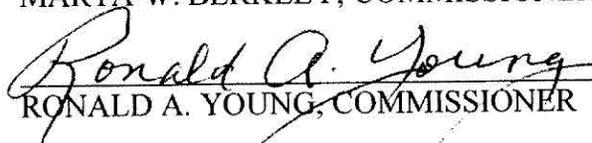
In the instant case, the Commission mailed the Order Dismissing Appeal, by first class U.S. mail, to the address provided by the Tenant in his Notice of Appeal as well as his motion for reconsideration. See Order Dismissing Appeal at 7; see also Notice of Appeal at 7; Motion To Reissue Order of February 19, 2013 at 3. The Tenant’s counsel admits that “[t]he address listed on the order is correct.” See Supplement to Motion To Reissue Order of February 19, 2013 at 1. The Commission also notes that the Order Dismissing Appeal was not returned as undeliverable to the Commission. Other than the allegation that his counsel did not receive it, the Tenant has not provided the Commission with any evidence or reason that he did not receive the Order Dismissing Appeal. Moreover, contrary to the Tenant’s assertion, the Order Dismissing Appeal contained a certificate of service stating that it was mailed to the same address which was provided in the Tenant’s Notice of Appeal. See Order Dismissing Appeal at 7; see also Notice of Appeal at 7. The Commission is thus without the requisite evidence under the Act to conclude that we failed to provide the Tenant with the Order Dismissing Appeal.

The Commission therefore denies the Motion for Reconsideration.

SO ORDERED



MARTA W. BERKLEY, COMMISSIONER



RONALD A. YOUNG, COMMISSIONER

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:

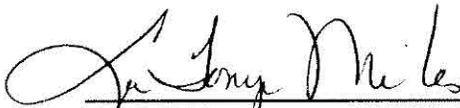
D.C. Court of Appeals
Office of the Clerk
Historic Courthouse
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER DENYING MOTION FOR RECONSIDERATION** in RH-TP-07-29,084 was mailed, postage prepaid, by first class U.S. mail on this **6th day of May, 2013** to:

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

Eric Von Salzen
McLeod, Watkinson & Miller
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LaTonya Miles
Clerk of Court
(202) 442-8949