

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-08-29,489

In re: 3133 Connecticut Ave., N.W.

Ward Three (3)

DONALD WASSEM*
Tenant/Appellant

v.

**KLINGLE CORPORATION,
B.F. SAUL COMPANY, and
B.F. SAUL PROPERTY COMPANY**
Housing Providers/Appellees

ORDER ON APPEARANCE AT HEARING

July 8, 2016

SZEGEDY-MASZAK, CHAIRMAN. 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 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 §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations

* The Commission, in its discretion, has amended the caption of this case to reflect its previous order, dated June 6, 2016, granting tenant/appellant Christine Burkhardt’s motion to withdraw her appeal. *See infra* n.2; *see, e.g., Reamer v. B.F. Saul Co.*, RH-TP-06-28,524 (RHC Mar. 26, 2015).

¹ OAH assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversion Division (RACD) of the Department of Consumer and Regulatory Affairs (DCRA) pursuant to the Office of Administrative Hearings Establishment Act, D.C. Law 14-76, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2007 Repl.). The functions and duties of RACD in DCRA were transferred to the RAD in DHCD by § 2003 of the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2010 Repl.).

("DCMR"), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

I. PROCEDURAL HISTORY

On August 4, 2015, Tenant/Appellant Donald Wassem ("Tenant") filed a notice of appeal with the Commission ("Notice of Appeal").² On May 10, 2016, the Commission issued a Notice of Scheduled Hearing and Notice of Certification of Record ("Notice of Scheduled Hearing"), setting a hearing on this appeal for June 9, 2016.

On May 20, 2016, the Tenant filed a "Request to Participate in Hearing(s) by Telephone, Or to Be Deemed Present via One or More of Three Alternatives" ("Motion on Appearance"). On June 3, 2016, in light of the Tenant's Motion on Appearance and the withdrawal of the other tenant/appellant in this case,³ the Commission, *sua sponte*, continued the scheduled hearing to allow the Tenant time to secure representation or make arrangements to appear at a later date. Burkhardt v. Klingle Corp., RH-TP-08-29,489 (RHC June 3, 2016) ("Order on Continuance"). The Commission denied, with prejudice, the Tenant's requested to be excused from appearing and to rely entirely on the written submissions. Order on Continuance at 5-6.⁴

There are two pending matters filed by the Tenant.

First, on June 6, 2016, the Commission received a filing from the Tenant captioned "Request for No One to Be Dismissed for Failing to Appear at Hearing(s)" ("Motion on Dismissal"). The Motion on Dismissal states that it was mailed on June 1, 2016, before the Commission issued its Order on Continuance. The Motion on Dismissal requests that the Tenant

² The Notice of Appeal was joined by Christine Burkhardt, who, on June 2, 2016, filed a motion to withdraw her appeal, which was granted. See Burkhardt v. Klingle Corp., RH-TP-08-29,489 (RHC June 3, 2016).

³ See *supra* n.2.

⁴ The Commission notes that the Motion on Appearance was denied without prejudice with respect to the Tenant's request to appear through a designated representative. Order on Continuance at 6.

be allowed to supplement the original Motion on Appearance with additional legal argument, specifically, that the Commission should follow D.C. App. R. 34(e) if any party fails to appear at the Commission's scheduled hearing. *See* Motion at 1-2.

Second, on June 22, 2016, the Tenant filed a motion for reconsideration of the Commission's Order on Continuance ("Motion for Reconsideration"). The Motion for Reconsideration, in essence, expands upon the Tenant's previous arguments in the Motion on Dismissal that the Commission should decide this appeal without oral argument. As of the date of this order, the Commission has not received any opposition from the Housing Provider.

II. DISCUSSION

The Commission has adopted the jurisprudential legal standard of "mootness" in adjudicating cases before it. *See, e.g., Knight-Bey v. Henderson*, RH-TP-07-28,888 (RHC Jan. 8, 2013) (where tenant/petitioner fails to appear at hearing, failure to afford due process through proper notice of hearing to housing provider/respondent is moot). The Commission determines the Motion on Dismissal is moot for the following reasons.

The Motion on Dismissal requests to supplement the Tenant's Motion on Appearance, which was disposed of by the Order on Continuance. Moreover, the Tenant's request in the Motion on Appearance, as well as in the Motion on Dismissal, relates to the Commission hearing that was scheduled for June 9, 2016, that was not held. The Commission will not "decide abstract, hypothetical or moot questions, disconnected with the granting of actual relief[.]" McChesney v. Moore, 76 A.2d 389, 390 (D.C. 1951). Because the Commission continued the previously-scheduled hearing, there is no sanction to be imposed on any party that failed to

appear.⁵ Therefore, the Motion on Dismissal is moot with respect to the Motion on Appearance and the June 9, 2016, hearing.⁶

With respect to the Tenant's Motion for Reconsideration, the Commission observes that its rules governing motions for reconsideration apply only to decisions of the Commission "issued to dispose of the appeal." 14 DCMR § 3823.1; *see Holbrook St., LLC v. Seegers*, RH-TP-14-30,571 (RHC June 9, 2016) (Order on Reconsideration of Escrow Account or Bond). The Commission's Order on Continuance was not a final, dispositive order with regard to the merits of the issues contained in Tenant's appeal. On the contrary, the Commission merely determined that the Tenant would not be excused from appearance at a hearing in this case, without any

⁵ The Commission observes that it has consistently followed the precedent established in *Stancil v. D.C. Rental Hous. Comm'n*, 806 A.2d 622, 622-25 (D.C. 2002), that failure to appear at a scheduled Commission hearing is grounds for dismissal of an appeal. *See, e.g., Tenants of 2480 16th St., N.W. v. Dorchester House Assocs., LLC*, RH-SF-09-20,098 (RHC Sept. 25, 2015); *Siegel v. B.F. Saul Co.*, RH-TP-06-28,524 (RHC Sept. 9, 2015) (dismissing several of a group of appellants who did not appear); *Hardy v. Sigalas*, RH-TP-09-29,503 (RHC July 21, 2014) (dismissing tenant's cross-appeal where tenant failed to appear at the Commission's hearing); *Carter v. Paget*, RH-TP-09-29,517 (RHC Dec. 11, 2013) (dismissing appeal where appellant failed to appear at the Commission's hearing); *Wilson v. KMG Mgmt., LLC*, RH-TP-11-30,087 (RHC May 24, 2013) (dismissing the tenant's notice of appeal where she failed to appear at the Commission's hearing). The Commission further observes that, in light of the longstanding precedent of *Stancil*, 806 A.2d at 622-25, D.C. App. R. 34(e) does not serve as the applicable legal standard for Commission determinations regarding the appearance of parties at a Commission hearing.

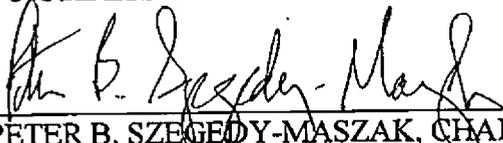
⁶ As a supplementary jurisprudential legal standard to "mootness" for purposes of this appeal, the Commission notes the applicability of the legal standard of "ripeness". *See, e.g., Young v. Vista Mgmt.*, TP 28,635 (RHC Sept. 18, 2012) (tenant petition challenging housing provider's "planning" to implement voluntary agreement was not ripe where voluntary agreement had not been approved). The Commission determines that the Motion on Dismissal is not only "moot", but it is also not "ripe" for appellate review because the Commission has not yet rescheduled this appeal for a hearing. *See infra*.

In determining whether a claim is ripe for review, the DCCA has established a two-prong test: "(1) the 'fitness' prong is satisfied where no further factual development is necessary to deal with the legal issues presented; and (2) the 'hardship' prong depends on the certainty of the alleged harm, and will not be satisfied where the alleged harm is too 'abstract, hypothetical and contingent.'" *Young*, TP 28,635 (quoting *Local 36 Int'l Ass'n of Firefighters v. Rubin*, 999 A.2d 894, 896-98)). With regard to the Motion on Dismissal, "further factual development" is necessary with respect to the actual appearance of the parties to this appeal at a Commission hearing because (1) a hearing has not yet been scheduled and (2) the Commission can only speculate about the appearance of any parties at a rescheduled hearing. As such, the Motion on Dismissal is entirely speculative, "hypothetical and contingent" because no hearing is scheduled and no party has yet failed to appear. Therefore, the Commission determines that Motion on Dismissal is not ripe with respect to any future hearing. *See Young*, TP 28,635.

reference to the merits of the legal issues in the Tenant's appeal. See Notice of Appeal; Order on Continuance at 6.⁷

Accordingly, the Commission denies the Tenant's Motion on Dismissal and Motion for Reconsideration.

SO ORDERED



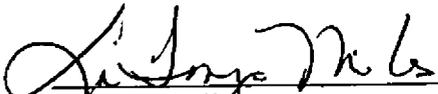
PETER B. SZEGEDY-MASZAK, CHAIRMAN

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing ORDER in RH-TP-08-29,489 was served by first-class mail, postage prepaid, this 8th day of July, 2016, to:

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⁷ In the Motion for Reconsideration, the Tenant also maintains that the Commission is not required to hold a hearing or to dismiss an appellant for failure to appear at a hearing, and therefore, as already asserted in the Motion on Dismissal, shall follow D.C. App. R. 34(e). See Motion on Reconsideration at 1-3. As noted *supra* at n. 5, the Commission determines that in light of the longstanding precedent of Stancil, 806 A.2d at 622-25, D.C. App. R. 34(e) does not serve as the applicable legal standard for Commission determinations regarding the appearance of parties at a Commission hearing.