

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-14-30,534

In re: 437 New York Ave., NW, #609

Ward Two (2)

SHAFIQ HIRANI
Tenant/Appellant

v.

NOMADIC REAL ESTATE
Housing Provider/Appellee

ORDER DISMISSING APPEAL

August 28, 2015

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 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 §§ 2-501-510 (2001), 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 OAH assumed jurisdiction over tenant petitions from the Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion Division (RACD) 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 DHCD by § 2003 the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2010 Repl.).

I. PROCEDURAL HISTORY

Tenant/Appellant Shafiq Hirani (Tenant), resident of the housing accommodation located at 437 New York Ave., NW, #609, (Housing Accommodation), filed Tenant Petition RH-TP-14-30,534 (Tenant Petition) with RAD on June 24, 2014, alleging that the Housing Provider/Appellee Nomadic Real Estate (Housing Provider) violated the Act as follows:

1. The building where my/our Rental Unit(s) is/are located is not properly registered with the RAD;
2. The rent increase was larger than the increase allowed by any applicable
3. The Housing Provider did not file the correct rent increase forms with the RAD.
4. The rent was increased while my/our Rental Units was/were not in substantial compliance with the D.C. Housing Regulations.
5. The rent ceiling exceeds the legally-calculated rent for my/our units.
6. The rent charged is in excess of the rent ceiling for my Rental Unit.
7. Services and/or facilities provided as part of my/our rent have been substantially reduced.
8. Services and/or facilities, as set forth in the Voluntary Agreement filed with and approved by the Rent Administrator, have not been provided as specified.
9. The Housing Provider, property manager, or other agent of the Housing [P]rovider has taken retaliatory action against me/us in violation of D.C. OFFICIAL CODE § 42-3505.02 (Supp. 2008).

Tenant Petition at 1-3; Record for RH-TP-14-30,534 (R.) at 23-5.

A hearing was held before Administrative Law Judge Erika Pierson (ALJ) on January 21, 2015, and a final order was issued on July 13, 2015: Shafiq Hirani v. Nomadic Real Estate, RH-TP-14-30,534 (OAH July 13, 2015) (Final Order). R. at 61-78. In the Final Order, the ALJ determined that the Tenant had met his burden of proving that services and facilities were reduced at the Housing Accommodation, and awarded him \$815.18 plus interest. *Id.* at 14; R. at

65. The ALJ also rolled back the Tenant’s rent, and ordered that the Housing Provider could not increase rent in the Tenant’s unit until the Housing Accommodation was properly registered with RAD. *Id.* at 14-15; R. at 64-5. The ALJ determined that the Tenant failed to meet his burden of proof on the remaining allegations in the Tenant Petition. *Id.* at 15; R. at 64.

On July 31, 2015, the Tenant filed a notice of appeal with the Commission (Notice of Appeal).²

II. WHETHER THE NOTICE OF APPEAL WAS TIMELY

Under the Act and its regulations, the time limit for filing an appeal with the Commission is mandatory and jurisdictional. *See, e.g., Salazar v. Varner*, RH-TP-09-29,645 (RHC Jun 16, 2015); *Gelman Mgmt. Co. v. Campbell*, RH-TP-09-29,715 (RHC Mar. 11, 2015); *Allen v. L.C. City Vista LP*, RH-TP-12-30,181 (RHC Apr. 29, 2014); *Kuratu v. Ahmed. Inc.*, RH-TP-07-28,985 (RHC Feb. 28, 2014); *Shipe v. Carter*, RH-TP-08-29,411 (RHC Sept. 18, 2012). In accordance with the Commission’s regulations at 14 DCMR § 3802.2 (2004), a notice of appeal must be filed within ten days after a final decision is issued, plus three days if the decision was mailed to the parties.³ The ten days do not include intermediate weekends or holidays. 14

² The Commission notes that the Notice of Appeal was initially filed on July 31, 2015. It was mistakenly date-stamped by Commission staff as “July 30, 2015;” however, the Commission’s Clerk of the Court corrected the error on the Notice of Appeal immediately on the same day as the filing—July 31, 2015—and contacted the Tenant by email to inform him of the mistake. The Clerk sent the Tenant a corrected date-stamped copy of the Notice of Appeal, showing the correct filing date of July 31, 2015, and the Tenant confirmed receipt of the Clerk’s email on the same day. A copy of the Clerk’s July 31, 2015 email to the Tenant, and the Tenant’s reply, are appended to this Order as Attachment A. The Commission is thus satisfied that it timely corrected its mistaken date of receipt of the Notice of Appeal, appropriately and with dispatch notified the Tenant of its mistaken dating, and properly secured the Tenant’s acknowledgement of the Commission’s description of its mistake and its subsequent correction.

³ 14 DCMR § 3802.2 provides the following: “A notice of appeal shall be filed by the aggrieved party within ten (10) days after a final decision of the Rent Administrator [or ALJ] is issued; and, if the decision is served on the parties by mail, an additional three (3) days shall be allowed.”

DCMR § 3816.3.⁴

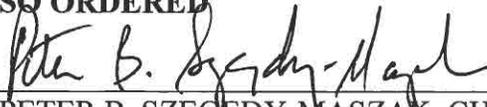
The Commission's review of the record in this case reveals that the Final Order was served on the parties, by first-class mail, on July 13, 2015; therefore, the ten-day time period for filing a notice of appeal, including three days for mailing, and excluding intermediate weekends, expired on July 30, 2015, the day before the Tenant's Notice of Appeal was filed with the Commission on July 31, 2015. 14 DCMR §§ 3802.2 & 3816.3; Final Order at 1, 18; R. at 61, 78.

Accordingly, the Commission determines that the Notice of Appeal was untimely, and thus the Commission lacks jurisdiction over the issues raised therein. 14 DCMR §§ 3802.2 & 3816.3; Salazar, RH-TP-09-29,645; Campbell, RH-TP-09-29,715; Allen, RH-TP-12-30,181; Kuratu, RH-TP-07-28,985; Shipe, RH-TP-08-29,411. The Commission therefore dismisses the Notice of Appeal for lack of jurisdiction. 14 DCMR §§ 3802.2 & 3816.3; Salazar, RH-TP-09-29,645; Campbell, RH-TP-09-29,715; Allen, RH-TP-12-30,181; Kuratu, RH-TP-07-28,985; Shipe, RH-TP-08-29,411.

III. CONCLUSION

For the foregoing reasons, the Commission determines that the Notice of Appeal was untimely, and dismisses the Notice of Appeal for lack of jurisdiction. 14 DCMR §§ 3802.2 & 3816.3; Salazar, RH-TP-09-29,645; Campbell, RH-TP-09-29,715; Allen, RH-TP-12-30,181; Kuratu, RH-TP-07-28,985; Shipe, RH-TP-08-29,411.

SO ORDERED



PETER B. SZEGEDY-MASZAK, CHAIRMAN

⁴ 14 DCMR § 3816.3 provides the following: "When the time period prescribed or allowed is ten (10) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation."

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (2004), provides, "[a]ny 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."

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:

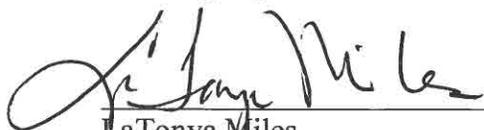
D.C. Court of Appeals
Office of the Clerk
Historic Courthouse
430 E Street, N.W.
Washington, DC 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the **ORDER DISMISSING APPEAL** in RH-TP-14-30,534 was served by first-class mail, postage prepaid, this 28th day of August, 2015, to:

Shafiq Hirani
437 New York Ave., NW
Apt. 609
Washington, DC 20001

Joseph Rieling
Nomadic Real Estate
727 15th Street, NW, #100
Washington, DC 20005



LaTonya Miles
Clerk of Court
(202) 442-8949

APPENDIX A

Miles, LaTonya (DHCD)

From: Shafiq Hirani <shafiqhirani@yahoo.com>
Sent: Friday, July 31, 2015 2:36 PM
To: Miles, LaTonya (DHCD)
Subject: Re: Corrected Date Stamp Copy of Notice of Appeal File on July 31, 2015 in RH-TP-14-30,534

Received. Thanks.

shafiq hirani
stargate management, inc.
shafiqhirani@yahoo.com
tel: 202.290.1055

From: "Miles, LaTonya (DHCD)" <latonya.miles@dc.gov>
To: "shafiqhirani@yahoo.com" <shafiqhirani@yahoo.com>
Sent: Friday, July 31, 2015 2:32 PM
Subject: Corrected Date Stamp Copy of Notice of Appeal File on July 31, 2015 in RH-TP-14-30,534

Good afternoon, Mr. Hirani:

As we discussed during our phone conversation this afternoon, I am sending you a corrected, stamped copy of your Notice of Appeal for the above-referenced case.

As I informed you, there was a malfunction with the Commission's date stamp(Simplex) machine today (July 31, 2015), which was not discovered until immediately after you had departed the Commission's office. I am sending you a scanned copy which has been stamped with the correct date and time. Please replace the copy you have for your file and also the copy that you are sending to Nomadic Real Estate (Appellee) with a copy of the attached document; and discard the copies with the incorrect date of July 30, 2015.

Thank you for your cooperation. We apologize for any inconvenience.

LaTonya Miles
Clerk of Court
Rental Housing Commission, DHCD
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