

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

HP 20,812

In re: 4021 9th St., N.W.

Ward Four (4)

TENANTS OF 4021 9th STREET, N.W.
Tenants/Appellants

v.

E & J PROPERTIES, LLC
Housing Provider/Appellee

ORDER ON MOTION TO DISMISS

June 11, 2014

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from an Order issued by the Rent Administrator, based on a petition filed in the District of Columbia Department of Consumer & Regulatory Affairs (DCRA), Housing Regulation Administration (HRA).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 (Supp. 2008), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR

¹ The Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversion Division (RACD) of DCRA on October 1, 2006 pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (Supp. 2005). The functions and duties of 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 (Supp. 2008)).

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

I. PROCEDURAL HISTORY

On June 28, 2007, Housing Provider/Appellee E & J Properties, LLC (Housing Provider) filed hardship petition HP 20,812 (Hardship Petition) with the Rent Administrator related to the property located at 4021 9th St., N.W. (Housing Accommodation).² Hardship Petition at 1; Record for HP 20,812 (R.) at 114. On February 22, 2008,³ Grayce Wiggins, Acting Rent Administrator (Initial Acting Rent Administrator) issued an “Order Granting Hardship Petition in Part Based on Audit Report Findings and Conclusions and Statutory Right to File Exceptions and Objections,” E&J Props., LLC v. Tenants of 4021 9th St., NW, HP 20,812 (RAD Feb. 22, 2008) (Order Granting Hardship Petition).⁴ The Order Granting Hardship Petition determined that the Housing Provider had failed to carry the burden of proving the claim of hardship needed for approval of the entire 29% rent adjustment requested, and instead granted an increase in the amount of 1.1%. *See* Order Granting Hardship Petition at 2-3; R. at 168-69. The Order Granting

² The Act’s hardship petition provisions are contained generally in D.C. OFFICIAL CODE § 42-3502.12 (2001) and 14 DCMR § 4209 (2004). The Commission notes that the Hardship Petition at issue in this case was filed after the Act was amended, effective August 5, 2006, by the “Rent Control Reform Amendment Act of 2006,” D.C. Law 16-145 (Aug. 5, 2006), which amended the Act by eliminating the term “rent ceiling,” and in its place, substituting the term “rent charged.” *See* D.C. Law 16-145 §§ 2(a) & (c), 53 D.C. Reg. at 4889, 4890 (2006).

³ The February 22, 2008 Order Granting Hardship Petition had been previously issued on December 6, 2007; however, some of the tenants were not provided with copies of the December 6, 2007 order, so the Rent Administrator re-issued the order on February 22, 2008. *See* Order Granting Hardship Petition at 2; R. at 169.

⁴ The Commission notes that the Order Granting Hardship Petition was issued well outside of the time period prescribed under 14 DCMR § 4209.20(d) (“The Rent Administrator shall consider and review the hardship petition and supporting documentation and, within twenty (20) days following the filing of the petition, shall issue and serve on the parties an audit report with recommendations regarding the acceptance or denial of expenditures and other financial claims and the final disposition of the hardship petition”). The Order Granting Hardship Petition is not the subject of this appeal.

Hardship Petition provided that the parties had until March 25, 2008 to file exceptions and objections, and that if no exceptions and objections were filed, the Order Granting Hardship Petition would become a final order on April 7, 2008. *See* Order Granting Hardship Petition at 1-4; R. at 125-28.⁵

On March 21, 2008, the Housing Provider filed Exceptions and Objections to the Order Granting Hardship Petition (Housing Provider's Exceptions and Objections). *See* Housing Provider's Exceptions and Objections at 2-3; R. at 331-32. On March 25, 2008, Tillman Peck, claiming to act on behalf of the Taylor Towers Tenant Association (Tenant Association), filed exceptions and objections to the Order Granting Hardship Petition. *See* Tenant Association's Exceptions and Objections at 1; R. at 341.⁶

On September 12, 2008, the current Acting Rent Administrator, Keith Anderson (Current Acting Rent Administrator) entered an Order (September 12 Order), summarily vacating the Order Granting Hardship Petition. *See* September 12 Order at 1-2; R. at 343-44. Although the September 12 Order did not contain findings of fact or conclusions of law, it contained the following language regarding the parties' exceptions and objections:

After review of the audit report, the exceptions and objections, the Rent Administrator determined that HP 20,812 should be resubmitted to the auditor to

⁵ According to D.C. OFFICIAL CODE § 42-3502.12(c) (2001):

(c) The Rent Administrator shall accord an expedited review process for a petition filed under this section and shall issue and publish a final decision within 90 days after the petition has been filed. If the Rent Administrator does not render a final decision within 90 days from the date the petition is filed, the rent ceiling adjustment requested in the petition may be conditionally implemented by the housing provider. The conditional rent ceiling adjustment shall be subject to subsequent modification by the final decision of the Rent Administrator on the petition. If a hearing has been held on the petition, and the Rent Administrator by order served on the parties at least 10 days prior to the expiration of the 90 days, makes a provisional finding as to the rent ceiling adjustment justified by the petition, the housing provider may implement only the amount of the rent ceiling adjustment authorized by the order. Except to the extent modified by this subsection, the provisions of § 42-3502.16 shall apply to any adjustment under this section.

⁶ The party status of the Tenant Association is addressed *infra* at pp. 11-12 and n.22.

consider additional documentation provided by Petitioners and Respondents pursuant to the Regulation 14 DCMR §[]4209.20 (2004).

Accordingly, the Rent Administrator hereby vacates the Order issued on February 22, 2008 in Hardship Petition 20,812.

On completion of the final audit, the Rent Administrator shall render a decision and order *de novo* on the merits in HP 20,812. The Rent Administrator's decision and order shall contain findings of fact and conclusions of law regarding the calculation of the amount of rent increase recommended, if any. The recommendation shall be based solely on HP 20,812 and the supporting documentation submitted by the Petitioners and Respondents.

Pending the issuance of the Rent Administrator's decision, the Housing Provider may take a provisional increase of 29%. This increase, however, is subject to the final outcome of the audit report.

September 12 Order at 2; R. at 343. On October 10, 2008, the Tenant Association, claiming to be represented by Tillman Peck, filed a Notice of Appeal (Notice of Appeal) with the Commission. *See* Notice of Appeal at 1. In their Notice of Appeal, the Tenant Association stated the following:

1. On September 26, 2008, we filed a Motion for Reconsideration of the September 12 Decision and Order. To date, we have not received any correspondence related to that Motion.
2. In the September 12, 2008 Order, no reason is given for vacating the February 2008 Order regarding same Petition.
3. In landlords' [sic] filing of Exceptions and Objections to Rent Administrator's December 2007 Order, landlord apparently no longer sought a 29% rent increase. Rather, the revised request seemed to be capped at no more than 8.28%.
4. The February 22, 2008 order being "Vacated" was signed by Rent Administrator Grayce Wiggins. The removal of Grayce Wiggins from the position of Rent Administrator is a matter of great public and political controversy at the moment. Seeing that we, too, are deeply concerned over this matter, we would urge that the Orders signed by Grayce Wiggins not be

