

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-HP-06-20,806

In re: 2613 39th Street, NW

Ward Three (3)

TAMELA GORDON

Tenant/Appellant

v.

UNITED PROPERTY OWNERS (USA)

Housing Provider/Appellee

ORDER GRANTING MOTION TO WITHDRAW

May 15, 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),¹ based on a petition filed in the Rental Accommodations Division (RAD) of the District of Columbia Department of Housing and Community Development (DHCD). 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 (Supp. 2008), and the District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

¹ The Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from the Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion Division (RACD) 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 (Sept. 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (Supp. 2008)).

I. PROCEDURAL HISTORY²

On August 31, 2006, Housing Provider/Appellee United Property Owners (USA) (Housing Provider), filed Hardship Petition RH-HP-06-20,806 (Hardship Petition) in relation to the housing accommodation located at 2613 39th Street, NW (Housing Accommodation). Hardship Petition at 1; R. at 331.

On January 24, 2008, nearly seventeen (17) months after the filing of the Hardship Petition, RAD issued an order denying the Hardship Petition, based on an audit report dated November 26, 2007. United Property Owners (USA) v. Tenants of 2613 39th St., NW, HP 20,806 (RAD Jan. 24, 2008) (Order Denying Hardship Petition); R. at 338-41. On that same date, January 24, 2008, RAD also issued a “Notice of Pending Hardship Petition and Housing Provider’s Statutory Right to Hardship Conditional Rent Adjustments.” United Property Owners (USA), HP 20,806 (RAD Jan. 24, 2008) (Jan. 24 Notice); R at 342-44.

Shortly thereafter, on February 11, 2008, without any intervening filings by any of the parties, RAD issued a third order, granting the Hardship Petition in part. United Property Owners (USA), HP 20,806 (RAD Feb. 11, 2008) (Feb. 11 Order); R. at 350-54. The Feb. 11 Order explained that the Order Denying Hardship Petition had been issued in error, because it had been based on a “preliminary audit report, which contained an incomplete analysis of the financial data.” *Id.* at 2; R. at 353. Additionally, the Feb. 11 Order granted a hardship increase in the amount of 95%. *Id.*

² The Commission notes that the procedural history of the Hardship Petition is convoluted at best. Nearly eight years passed between the filing of the Hardship Petition and a hearing before OAH on Tenant Tamela Gordon’s exceptions and objections, without any excuse or justifiable reason proffered by either RAD or OAH. However, the Act does not provide, and therefore the Commission cannot provide, any relief to the parties due to delays in the processing and adjudication of the Hardship Petition.

On March 17, 2008, both the Housing Provider and Tenant Tamela Gordon (Tenant) filed exceptions and objections to the Feb. 11 Order. R. at 360-65, 455-57. Without responding to the parties' exceptions and objections, RAD issued a fourth order on September 29, 2008, more than two (2) years after the filing of the Hardship Petition, granting the Hardship Petition in part, based on an audit report completed on August 14, 2008, approving a 108% increase. United Property Owners (USA), HP 20,806 (RAD Sept. 29, 2008) (Sept. 29 Order); R. at 471-74. On October 29, 2008, the Tenant in this case and Tenant Allen Hengst separately filed exceptions and objections to the Sept. 29, 2008 Order. R. at 480-86.

Evidentiary hearings were held on December 3, 2013, February 19, 2014 and February 20, 2014. On April 8, 2014, the ALJ issued a final order, United Property Owners (USA) v. Tamela Gordon, RH-HP-06-20,806 (OAH Apr. 8, 2014) (Final Order). *See* R. at 770-833.

On September 27, 2010, the Tenant filed a Notice of Appeal (Notice of Appeal) with the Commission. Thereafter, on May 12, 2015, the Tenant filed a Motion to Withdraw, requesting that her case be dismissed with prejudice. Attached to the Motion to Withdraw were the following: (1) a Notice of Release, indicating that the Tenant releases all claims against the Housing Provider related to the Housing Accommodation arising from the Hardship Petition; and (2) a photocopy of a check, from the Housing Provider, made payable to the Tenant in the amount of six thousand dollars (\$6,000), and indicating that "[e]ndorsement of this check represents full accord & satisfaction of any & all claims, of any nature whatsoever between Tenant & landlord up to & through this date." The Commission observes that the check has been endorsed by the Tenant. The Commission, in its discretion, interprets the Notice of Release and the endorsed check in the amount of \$6,000.00, collectively, as a settlement agreement (Settlement Agreement) between the parties to this case. *See, e.g., Reamer, et al. v. Klinge*

Corp., et al., RH-TP-06-28,524 (RHC Mar. 26, 2015) (interpreting Motion for Voluntary Dismissal as Motion to Withdraw Appeal); Johnson v. MPM Mgmt., Inc., RH-TP-09-27,294 (RHC Oct. 1, 2012) (interpreting consent motions to dismiss filed by both parties as the equivalent to a stipulation of dismissal). *See also* Prime v. D.C. Dep't of Pub. Works, 955 A.2d 178, 182 (D.C. 2008) (noting that “[a]dministrative tribunals ‘must be, and are, given discretion in the procedural decisions made in carrying out their statutory mandate,’” *quoting* Ammerman v. D.C. Rental Accommodations Comm’n, 375 A.2d 1060, 1063 (D.C. 1977)).

II. DISCUSSION

The Act’s regulations provide the following regarding the withdrawal of an appeal before the Commission:

3824.1 An appellant may file a motion to withdraw an appeal pending before the Commission.

3824.2 The Commission shall review all motions to withdraw to ensure that the interests of all parties are protected.

14 DCMR § 3824 (2004). *See, e.g.*, Maycroft, LLC v. Tenants of 1474 Columbia Rd., N.W., HP 20,837 (RHC Sept. 4, 2009) (granting motion for withdrawal of appeal where the parties entered into a “70% Voluntary Agreement” which settled the case); Blackwell v. Dudley Pro Realty, LLC, RH-TP-07-29,075 (RHC May 28, 2008) (finding motion for withdrawal of appeal was in the interest of all parties where all parties agreed to the dismissal of the appeal); Assalaam v. Schauer, TP 27,915 (RHC July 12, 2004) (granting motion to withdraw appeal where parties’ settlement agreement demonstrated that the interests of all parties were protected by “providing for repairs in the Tenant’s rental unit and the disbursement of the funds in the Registry of the court to both parties”).

The Commission has consistently stated that settlement of litigation is to be encouraged. *See, e.g., KMG Mgmt., LLC v. Richardson*, RH-TP-12-30,230; *Hernandez v. Gleason*, TP 27,567 (RHC March 26, 2004); *Bartelle v. Washington Apts.*, TP 27,617 (RHC Jan. 26, 2004); *Kellogg v. Dolan*, TP 27,550 (RHC Feb. 20, 2003). In *Proctor v. D.C. Rental Hous. Comm'n*, 484 A.2d 542, 548 (D.C. 1984), the District of Columbia Court of Appeals (DCCA) established the following five (5) factors for the Commission to use in evaluating settlement agreements: (1) the extent to which the settlement enjoys support among affected tenants; (2) its potential for finally resolving the dispute; (3) the fairness of the proposal to all affected persons; (4) the saving of litigation costs to the parties; and (5) the difficulty of arriving at a prompt, final evaluation of the merits, given the complexity of law, and the delays inherent in the administrative and judicial processes. *See KMG Mgmt., LLC*, RH-TP-12-30,230; *Williams & Sons, LLC v. Fisher*, RH-TP-09-29,522 (RHC Feb. 24, 2012).

The Commission's review of the Settlement Agreement in this case indicates the following: (1) the Motion to Withdraw was agreed to by both parties, with the Notice of Release signed by the Tenant and the check for \$6,000.00 issued by the Housing Provider and endorsed by the Tenant; (2) the Settlement Agreement will fully resolve the dispute in this appeal and any other legal actions between these parties related to the Hardship Petition for the Housing Accommodation, because the Tenant has accepted payment in full in the amount of \$6,000.00, in complete and fair consideration and exchange for the Tenant's withdrawal and settlement of all outstanding claims against the Housing Provider related to Hardship Petition for the Housing Accommodation; (3) the Settlement Agreement is fair to all parties because it results in both the Tenant's receipt of \$6,000.00 from the Housing Provider as monetary compensation and, in exchange, the full release of the Housing Provider from any current and future liabilities arising

from the Tenant's legal claims related to the Hardship Petition for the Housing Accommodation; (4) both parties save the litigation costs associated with any other current and future legal disputes related to the Hardship Petition for the Housing Accommodation; and (5) by means of the Settlement Agreement, the parties have avoided the difficulties and delays inherent in arriving at a reasonably prompt, fair and complete adjudication of the merits of each party's settled causes of action related to the Hardship Petition for the Housing Accommodation. Proctor, 484 A.2d at 548; *see* KMG Mgmt, LLC, RH-TP-12-30,230; Williams & Sons, LLC, RH-TP-09-29,522. Furthermore, the Commission has found no evidence in the record to indicate that the Settlement Agreement was not knowingly, voluntarily and in good faith negotiated and executed by the parties.

Based on the foregoing and the substantial evidence in the record, the Commission determines that the interests of all the parties hereto are protected by the filing of the Motion to Withdraw. *See* 14 DCMR § 3824.2.

III. CONCLUSION

For the reasons stated *supra*, the Commission grants the Tenant's Motion to Withdraw the Notice of Appeal described herein and dismisses said Notice of Appeal *with prejudice*.

SO ORDERED


PETER B. SZEGEDY-MASZAK, CHAIRMAN

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 **DECISION AND ORDER** in RH-HP-06-20,806 was served by first-class mail, postage prepaid, this **15th day of May, 2015**, to:

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