

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-06-28,794

In re: 4501 Connecticut Avenue, N.W., Unit 809

Ward Three (3)

SMITH PROPERTY HOLDINGS FIVE (D.C.) L.P.
Housing Provider/Appellant

v.

KAREN MORRIS AND DAVID POWER
Tenants/Appellees

**ORDER ON CONSENT MOTION FOR
EXTENSION OF TIME TO FILE BRIEF**

May 22, 2014

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 District of Columbia (D.C.) Department of Consumer & Regulatory Affairs (DCRA), Housing Regulation Administration (HRA), Rental Accommodations and Conversions Division (RACD).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), 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 RACD pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2005 Supp.). The functions and duties of the RACD were transferred to the Department of Housing and Community Development (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 (2008 Supp.)).

I. PROCEDURAL HISTORY²

On March 18, 2014, the Housing Provider/Appellant, Smith Property Holdings Five (D.C.) L.P. (Housing Provider), filed a notice of appeal (Notice of Appeal) with the Commission from Administrative Law Judge (ALJ) Nicholas Cobbs' Final Order on Remand, Morris v. Smith Prop. Holdings Five (D.C.) L.P., RH-TP-14-28,794 (OAH Mar. 18, 2014) (Final Order on Remand). On May 14, 2014, the Commission sent a Notice of Scheduled Hearing and Notice of Certification of Record to both the Housing Provider and the Tenants/Appellees Karen Morris and David Power (Tenants), by first-class mail, postage prepaid.

On May 21, 2014, the Housing Provider filed a "Consent Motion for Extension of Time to File Appellant's Brief" (Motion for Extension of Time). The Housing Provider noted in the Motion for Extension of Time that counsel for the Tenants consented to the extension of time. *See* Motion for Extension of Time at 1 n.1.

II. DISCUSSION

The Commission's regulations provide the following guidance regarding extensions of time:

3815.1 Any party may move . . .for extension of time to file a pleading . . .if the motion is served on opposing parties and the Commission at least five (5) days before the hearing or the due date

3815.2 Motions shall set forth good cause for the relief requested.

3815.3 Conflicting engagements of counsel, absence of counsel, or the employment of new counsel shall not be regarded as good cause for continuance unless set forth promptly after notice of the hearing has been given.

² A detailed factual background prior to this appeal after remand is set forth in the Commission's Decision and Order in Smith Prop. Holdings Five (D.C.) L.P. v. Morris, RH-TP-06-28,794 (RHC Dec. 23, 2013). The Commission sets forth in this decision only the facts relevant to the issues that arise from the Housing Provider's appeal filed on March 28, 2014.

14 DCMR §§ 3815.1-.3 (2004). Administrative tribunals, such as the Commission, “must be, and are, given discretion in the procedural decisions made in carrying out their statutory mandate.” Prime v. D.C. Dep’t of Pub. Works, 955 A.2d 178 (D.C. 2008) (quoting Ammerman v. D.C. Rental Accommodations Comm’n, 375 A.2d 1060, 1063 (D.C. 1977)). Continuances are committed to the sound discretion of the Commission. See Prime, 955 A.2d at 178; King v. D.C. Water and Sewer Auth., 803 A.2d 966, 968 (D.C. 2002).

In considering an extension of time, the Commission will consider the following factors: (1) the reasons for the extension of time; (2) the prejudice to the moving party resulting from a denial; (3) the moving party’s diligence in seeking relief; (4) any lack of good faith; and (5) any prejudice to the non-moving party. See Marguerite Corsetti Trust v. Segreti, RH-TP-06-28,207 (RHC Jan. 6, 2012). See also Klinge Corp. v. Tenants of 3133/3131 Connecticut Ave., N.W., NV-9-001 (June 28, 2013) (citing Nezhadessivandi v. Ayers, TP 25,091 (RHC May 28, 2002)); Taylor v. Cummings, RH-TP-08-29,345 (RHC June 2, 2011).

The Housing Provider cited the following bases for its Motion for Extension of Time: under the current briefing schedule, the Housing Provider’s brief is due the day after a federal holiday, Memorial Day; counsel for the Housing Provider “has had to make several doctor visits and may have to see additional doctors in the immediate future;” counsel has an extra workload, covering for a colleague who is on vacation; and, counsel has to prepare “what may be a lengthy opposition to a motion for partial summary judgment” in a different case. See Motion for Extension of Time at 1-2. The Commission determines that these reasons are merely “conflicting engagements of counsel,” which, by themselves respectively and in the absence of the Tenants’ consent, would not constitute “good cause” for granting an extension of time. See 14 DCMR §§ 3815.1-3.

Based on its review of the record, the Commission observes that, with respect to a determination of “prejudice” to the Housing Provider, the Housing Provider has had nearly two (2) months since it filed its Notice of Appeal on March 18, 2014, to prepare a brief in this case. *See* Notice of Appeal at 1. Furthermore, as the Housing Provider states in the Motion for Extension of Time, the Housing Provider has been aware of the Commission’s scheduled hearing date since April, 2014. *See* Motion for Extension of Time at 1. On the other hand, to the extent that the Housing Provider relied upon the consent of the Tenants in filing this motion, prejudice to the Housing Provider for such detrimental reliance may be occasioned by the denial of the motion.

The Commission observes that the Housing Provider was diligent in seeking an extension of time for filing its brief, and based on its review of the record determines that there is no evidence that the Housing Provider’s Motion for Extension of Time was motivated by any lack of good faith. *See* Motion for Extension of Time at 1-2.

Finally, in the absence of the Tenants’ consent to this motion, the Commission notes that granting the Housing Provider’s Motion for Extension of Time may prejudice the Tenants. The Motion for Extension of Time proposes that the due date for the Housing Provider’s brief be extended to June 3, 2014. *See* Motion for Extension of Time at 2. However, under 14 DCMR § 3802.8,³ if the Housing Provider’s brief is due on June 3, 2014, the Tenants’ brief will not be due until June 20, 2014, three (3) days after the Commission’s scheduled hearing. *See* 14 DCMR § 3816.5.⁴ The Tenants would thus be deprived of time to which they are otherwise

³ 14 DCMR § 3802.8 provides the following: “Parties may file responsive briefs within ten (10) days of service of the pleading to which the response is being filed.

⁴ 14 DCMR § 3816.5 provides the following: “If a party is required to serve papers within a prescribed time period and does so by mail, three (3) day shall be added to the prescribed period to permit reasonable time for mail delivery.

entitled under the Act to raise issues to the Commission, and to respond to the Housing Provider's issues, before the Commission's hearing on this appeal.

Accordingly, having considered each of the five (5) factors relevant to a request for an extension of time, and duly noting the Tenants' consent to this Motion with the representation and assistance of counsel, the Commission grants the Housing Provider's Motion for Extension of Time because the consensual nature of this Motion indicates and manifests that neither the Housing Provider nor the Tenants will be prejudiced by granting the Motion. *See* 14 DCMR §§ 3815.1-3; Klingle Corp., NV-9-001; Marguerite Corsetti Trust, RH-TP-06-28,207; Taylor, RH-TP-08-29,345.

III. CONCLUSION

For the foregoing reasons, the Housing Provider's Motion for Extension of Time is hereby granted.

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, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER ON CONSENT MOTION FOR EXTENSION OF TIME TO FILE BRIEF** in RH-TP-06-28,794 was mailed, postage prepaid, by first class U.S. mail on this **22nd day of May, 2014** to:

Joseph Creed Kelly
1307 Linden Ct. NE
Washington, DC 20002

Roger D. Luchs
Richard W. Luchs
1620 L Street, N.W.
Suite 900
Washington, DC 20036



LaTonya Miles
Clerk of Court
(202) 442-8949