

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-07-29,084

In re: 500 23rd Street, N.W., Unit B908

Ward Two (2)

JOHN ANTHONY
Tenant/Appellant

v.

COLUMBIA PLAZA APARTMENTS
Housing Provider/Appellee

ORDER DISMISSING APPEAL

February 19, 2013

PER CURIAM. 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- 2-510 (2001 Supp. 2008), and the District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

¹ OAH assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversions Division (RACD) pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.01-1831.03(b-1)(1) (2001 Supp. 2005). The functions and duties of the 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 (2001 Supp. 2008)).

I. PROCEDURAL HISTORY

On March 10, 2008, Tenant/Appellant John Anthony (Tenant), residing in Unit B908 of 500 23rd Street, N.W. (Housing Accommodation), filed amended Tenant Petition (TP) 29,084 with RAD, claiming that Housing Provider/Appellee Columbia Plaza Apartments (Housing Provider) violated the Act as follows: (1) the Housing Provider had not properly registered the Housing Accommodation with RAD; (2) the Housing Provider provided no 30-day notice of a rent increase in 2006; and (3) the Housing Provider did not file the correct rent increase forms with RAD. Amended Tenant Petition at 1-2; Record for TP 28,977 (R.) at 118-19.

On May 14, 2009, the Housing Provider filed a Motion to Dismiss for Failure to Prosecute, in which it stated that the Housing Provider was suffering prejudice from the Tenant's delay in moving ahead with the case. R. at 145. On April 13, 2010, the Housing Provider filed a Motion for Judgment of Dismissal, in which it asserted that records on file with the District of Columbia established that the Tenant had no viable claim against the Housing Provider. R. at 158.

On October 29, 2010, Administrative Law Judge John P. Dean (ALJ) issued a Final Order, John Anthony v. Columbia Plaza Apartments, RH-TP-07-29,084 (OAH Oct. 29, 2010) (Final Order). Final Order at 1-4; R. at 162-65. The ALJ held that "[c]ounsel for the tenant has not responded to either" the Motion to Dismiss for Lack of Prosecution or the Motion for Judgment of Dismissal and, therefore, "I may treat them as conceded." Final Order at 1; R. at 165. The ALJ further held that "[b]ecause the housing provider's April 13, 2010, motion addressed the merits of the case, I will grant that motion." Final Order at 1; R. at 165. Therefore, the ALJ granted the Motion for Judgment of Dismissal

and dismissed the case with prejudice. Final Order at 2; R. at 164. The Tenant did not file a timely motion for reconsideration.

On November 19, 2010, the Tenant filed a Motion to Set Aside Final Order. R. at 166-68. On January 28, 2011, the Tenant filed a Motion to Vacate the Court's Order and Reinstate the Case or in the Alternative to Issue an Order Addressing the Motion. R. at 178-79.

On April 14, 2011, the ALJ issued an order, John Anthony v. Columbia Plaza Apartments, RH-TP-07-29,084 (OAH Apr. 14, 2011) (Order), in which he denied the Tenant's Motion to Set Aside Final Order. R. at 205-11.

On April 28, 2011, the Tenant filed a notice of appeal for TP 29,084 (Notice of Appeal) with the Commission. See Notice of Appeal. The Commission held a hearing on June 12, 2012.

II. ISSUES ON APPEAL

The Tenant/Appellant raised the following issues in his April 28, 2011, Notice of Appeal:

- A. Whether the ALJ erred when he found that the Housing Provider's argument was based on Rule 2933.2 (1) and was seeking relief under 1 DCMR 2833.2 (1) "excusable neglect."
- B. Whether the ALJ erred by failing to address the issues in the Motion filed November 19, 2010 under (6) "any other reason justifying relief from the operation of the final order."
- C. Whether the ALJ erred by not addressing the issues of the Motion to Vacate the Court's Order filed January 28, 2011.
- D. Whether the ALJ erred by stating that "the petitioner has not been prejudiced" when the ALJ delayed scheduling hearings, failed to serve the Final Order on the Tenant or his counsel, and caused long delays in the adjudication of the case.

- E. Whether the ALJ erred by not addressing the Motion to Amend the Motion to Vacate the Court's Order filed April 1, 2011.

Notice of Appeal at 1-7.

III. DISCUSSION

“The Rental Housing Act of 1985 provides that an appeal may be made to the Commission from a decision and order within ten (10) days of the issuance of a decision.” Chen v. Moy, TP 29,340 (RHC Mar. 27, 2012) at 3 (quoting D.C. OFFICIAL CODE § 42-3502.16 (h) (2001)). “The Commission is required by law to dismiss appeals that are untimely filed, because time limits are mandatory and jurisdictional.” Id. at 3-4 (citing United States v. Robinson, 361 U.S. 209 (1960); Yu v. D.C. Rental Hous. Comm'n, 505 A.2d 1310 (D.C. 1986); Totz v. D.C. Rental Hous. Comm'n, 474 A.2d 827 (D.C. 1974); Pinnacle Realty Mgmt. v. Doyle, TP 27,067 (RHC Aug. 8, 2008); Haka v. Gelman Mgmt Co., TP 27,442 (RHC Feb. 9, 2006)); see also Joyce v. D.C. Rental Hous. Comm'n, 741 A.2d 24, 27 (D.C. 1999) (“failure to appeal in time deprives the RHC of jurisdiction”); Dawson v. A. J. Edwards Realty, TP 29,153 (RHC Mar. 24, 2009) at 3; Haendel v. Budd, TP 27,598 (RHC May 21, 2007), at 2; Freeman v. Hamilton, TP 28,282 (RHC Jan. 17, 2006) at 2; C.I.H. Props. v. Torain, TP 24,817 (RHC July 17, 2000) at 3-4.

“Under the Commission's rules, the appealing party has ten (10) business days to file a notice of appeal with the Commission. In addition, three (3) more business days are added to the appeal period for the mailing of the OAH decision to the appealing party.” Gales v. Mitchell, TP 29,902 (RHC Dec. 11, 2012) at 7. The relevant rule states that, “[a] notice of appeal shall be filed by the aggrieved party within ten (10) days after the final decision of the [OAH] is issued; and if the decision is served on the parties by mail, an additional three (3) days shall be allowed.” 14 DCMR § 3802.2 (2004). The time to file

a notice of appeal is counted by excluding weekend days and holidays. 14 DCMR § 3912.2 (2004).

In this appeal, the thirteen (13) business day time period for filing a notice of appeal commenced on November 1, 2010, which was the first business day after the Final Order issued on October 29, 2010. The Tenant did not file a timely motion for reconsideration.² Therefore, the thirteen (13) business day period provided in rules 14 DCMR §§ 3802.2-3 (2004), expired on November 18, 2010.³ The Tenant, however, did not file the Notice of Appeal with the Commission until April 28, 2011. See Notice of Appeal at 1. The Notice of Appeal is clearly beyond the thirteen (13) business day period allowed for filing an appeal. See 14 DCMR § 3802.2 (2004).

The Commission notes that the Tenant filed a “Motion to Set Aside Final Order” one (1) day after the expiration of the time to file a notice of appeal. See R. at 166-68. This cannot not save the Notice of Appeal from dismissal. The Commission cannot extend the time to file an appeal. See 14 DCMR § 3816.6 (2004); Joyce, 741 A.2d at 27 (“the RHC may not enlarge the time for filing a notice of appeal”); see also Gales, TP 29,902 at 8 (“Despite filing a Motion for Relief from Final Order . . . the Housing Provider still had the responsibility of filing a timely notice of appeal in the Commission prior to the expiration of the time periods provided by 14 DCMR §§ 3802.2”); Outten v. Legum & Norman, Inc., TP 23,253 (RHC June 11, 1998) at 3 (“the appealing party will not be excused from the timely filing of a notice of appeal because of a pending Motion

² Former OAH Rule 28 DCMR § 2937.6 (2006) provides: “If a timely motion for reconsideration of a final order is filed, the time to appeal shall not begin to run until the motion is decided, or denied by operation of law.”

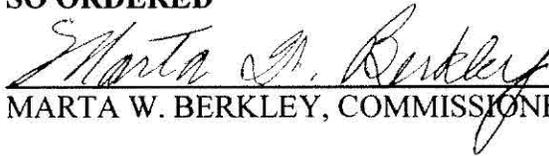
³ November 11, 2010 is not counted as part of the thirteen (13) business day period because it was a legal holiday.

for Relief from judgment”); Johnson v. Marcheta Investors Ltd. P’ship, 711 A.2d 109, 111 (D.C. 1998) (Super. Ct. Civ. R. 60 (b) motion cannot be used as a substitute for an appeal). Accordingly, the Commission is compelled to dismiss the appeal because it was not timely filed with the Commission.

IV. CONCLUSION

For the reasons stated herein, the Notice of Appeal is dismissed.

SO ORDERED



MARTA W. BERKLEY, COMMISSIONER

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:

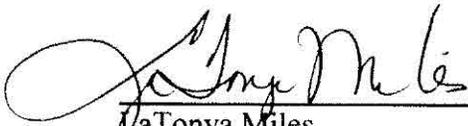
D.C. Court of Appeals
Office of the Clerk
Historic Courthouse
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER DISMISSING APPEAL** in RH-TP-07-29,084 was mailed, postage prepaid, by first class U.S. mail on this **19th day of February, 2013** to:

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