

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-08-29,302

In re: 301 G St., S.W.

Ward Six (6)

AMERICAN RENTAL MANAGEMENT COMPANY
Housing Provider/Appellant

v.

ARLENE CHANEY, et al
Tenant/Appellees

ORDER DISMISSING APPEAL

May 8, 2014

McKOIN, COMMISSIONER. 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 with the Department of Consumer and Regulatory Affairs (DCRA), in the Rental Accommodations and Conversion Division (RACD), Office of Adjudication.¹ The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. Official Code §§ 42-3501.01 - 42-3509.07 (2001 Supp. 2008), the District of Columbia Administrative Procedure Act (DCAPA), D.C. Official Code §§ 2-501-2-510 (2001), and the

¹ OAH assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversion 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 2008 Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (September 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03(a) (2001 Supp. 2008)).

District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

PROCEDURAL HISTORY

Arlene Chaney (Tenant), residing at 301 G St., S.W. (Housing Accommodation), filed Tenant Petition RH-TP-08-29,302 (Petition) on May 16, 2008, against American Rental Management Company (Housing Provider), and named as additional Petitioners The New Capitol Park Towers Tenant Association (Association) and seventy-eight (78) other individuals, including thirteen (13) co-tenants, allegedly residing at the Housing Accommodation (collectively Petitioners). The Petition alleged violations of the Act that included improper increases in rents charged, improper rent ceilings, improper filings for increases in rents or rent ceilings, substantial non-compliance with housing regulations for the Housing Accommodation and individual units, reduced or eliminated services and facilities, and retaliation by the Housing Provider.² Final Order at 8-9; R. at 1612-13.

On March 27, 2013, the Administrative Law Judge Louis Burnet (ALJ) issued a Final Order in Arlene Chaney, et al v. Am. Rental Mgmt. Co., RH-TP-08-29,302 (OAH Mar. 27, 2013) (Final Order), granting the Petitioners reductions in rents and rent ceilings, rent rollbacks and rent refunds for reductions in services and facilities in the common areas of the Housing Accommodation and individual units.³ See Final Order at 120-124; R. at 1497-1501. The Housing Provider filed a Motion for Reconsideration on April 11, 2013 and the Petitioners filed

² The violations stated are summarized from those listed in the Final Order.

³ The decisions of the ALJ stated here are summarized from those listed in the Final Order.

an Opposition to the Motion on April 29, 2013. *See* Order Granting Motion for Reconsideration (hereinafter Reconsideration Order) at 2; R. at 1756. The ALJ issued its Reconsideration Order on June 24, 2013, granting the Housing Provider's motion in part for errors found in the Final Order.

On July 9, 2013, the Housing Provider filed a Notice of Appeal with the Commission. *See* Notice of Appeal at 2. On April 1, 2014, the Housing Provider filed a motion to voluntarily dismiss its appeal of the Final Order and Reconsideration Order in this case (Motion to Dismiss Appeal). The Housing Provider states it is entitled to withdraw its appeal pursuant to 14 DCMR § 3824.1.⁴ *See* Motion to Dismiss Appeal at 1. The Petitioners did not file a response to either the Notice of Appeal or the Motion to Dismiss Appeal.

DISCUSSION OF THE ISSUES

In its Motion to Dismiss Appeal the Housing Provider does not state a reason for requesting the dismissal. The Housing Provider does state that it is voluntarily requesting that its appeal be dismissed. In addition, the Housing Provider states that it is entitled to withdraw its appeal pursuant to 14 DCMR § 3824.1. The Commission's rule 14 DCMR § 3824.1 provides that an appellant may file a motion to withdraw an appeal. *See supra* note 4. In the exercise of its reasonable discretion, the Commission thus interprets the Housing Provider's Motion to Dismiss as a Motion to Withdraw the Housing Provider's Appeal. The Commission will therefore evaluate the Motion to Dismiss Appeal according to the legal standard contained in 14 DCMR § 3824.1. *See* Klinge Corp. v. Tenants of 3133/3131 Connecticut Ave., N.W., NV-9-001 (RHC June 28, 2013) (housing provider filed a motion to dismiss appeal which the

⁴ The Commission notes that the Housing Provider listed the incorrect regulation, related to withdrawals of appeals (citing 14 DCMR § 2824.1). The correct regulation is 14 DCMR § 3824.1 which provides as follows: "An appellant may file a motion to withdraw an appeal pending before the Commission."

Commission deemed to be a motion to withdraw); MPM Mgmt. Inc. v. Tenants of 1460 Irving St., N.W., CI 20,806 (RHC May 11, 2007) (housing provider filed a motion to dismiss appeal which the Commission considered a motion to withdraw pursuant to 14 DCMR § 3824.1); Maycroft, LLC v. Tenants of 1474 Columbia Rd., N.W., HP 20,837 (RHC Sept. 4, 2009) (housing provider filed a motion to dismiss that the Commission deemed a motion to withdraw for purposes of review); Harrison v. Smith, TP 25,059 (RHC July 13, 2001) (tenant filed a motion to dismiss appeal which the Commission deemed a motion to withdraw).

In considering a motion to withdraw the Commission must ensure that the interests of all parties are protected as provided for in 14 DCMR § 3824.2.⁵ See Williams v. Asrat, TP 27,612 (RHC Dec. 1, 2004); Williams v. Lipscomb Realty Corp., TP 27,867 (RHC July 1, 2004); Lanier Assoc. v. Tenants of 1773 Lanier Pl., N.W., HP 20,880 (RHC Mar. 5, 2014). In this proceeding both parties are represented by counsel.

In considering the interest of the Petitioners the Commission notes that in the ALJ's Final Order and Reconsideration Order the Petitioners were awarded reductions in rent ceilings, rent refunds and rent rollbacks for lack of services and facilities, and for violations of the Act. See Final Order at 120-24; R. at 1497-1501; *see also* Reconsideration Order at 11-16; R. at 1742-47. The Petitioners did not file a Motion for Reconsideration of the Final Order. In the Petitioners' motion in opposition to the Housing Provider's Motion for Reconsideration of the Final Order they argued that the awards granted in the Final Order should be affirmed. See Opposition to Housing Provider Motion for Reconsideration at 1-2; R. at 1638-39.

⁵ 14 DCMR § 3824.2 provides as follows: "The Commission shall review all motions to withdraw to ensure that the interests of all parties are protected."

As noted *supra* at note 4, under 14 DCMR § 3824.1, the Housing Provider, as the party originally requesting an appeal of the Final Order and Reconsideration Order, may file a motion to withdraw an appeal pending before the Commission. In compliance with the requirements for a motion for reconsideration under the OAH regulations 1 DCMR 2828.5,⁶ the Commission notes that the ALJ's Reconsideration Order corrected errors identified in the Housing Provider's Motion for Reconsideration which included eliminating rent reductions for the incorrect period, changing reductions in rent to reductions in rent ceilings, prorating damages awarded for less than a full month and an award covering a period after a Tenant no longer resided at the Housing Accommodation, and limiting awards to Petitioners who participated in prior cases to the time period following the prior cases. *See* Reconsideration Order at 11-16; R. at 1742-47.

Based on its review of the record the Commission concludes that the interests of all parties are protected by the Commission's granting of the Housing Provider's Motion to Dismiss Appeal. The record indicates that the Petitioners' interest in maintaining the awards in the Final

⁶ 1 DCMR 2828.5 provides as follows:

If any party files a motion for reconsideration or for a new hearing within the ten (10) calendar day deadline, and where substantial justice requires, the Administrative Law Judge may change the final order for any reason including, but not limited to, the following:

- (a) The party filing the motion did not attend the hearing, has a good reason for not doing so, and states an adequate claim or defense;
- (b) The party filing the motion did not file a required answer to a Notice of Infraction or Notice of Violation or did not file some other required document, has a good reason for not doing so, and states an adequate claim or defense;
- (c) The final order contains an error of law;
- (d) The final order's findings of fact are not supported by the evidence; or
- (e) New evidence has been discovered that previously was not reasonably available to the party filing the motion.

Order and Reconsideration Order is supported and protected by the Motion to Dismiss Appeal and that the Housing Provider's interests in filing the Motion to Dismiss Appeal are supported and protected by the Commission's action. For the foregoing reasons, the Commission grants the Housing Provider's Motion to Dismiss Appeal.

SO ORDERED



CLAUDIA L. MCKOIN, 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:

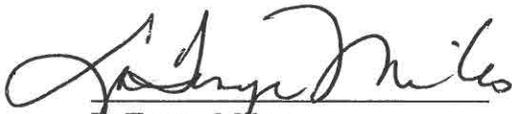
D.C. Court of Appeals
Office of the Clerk
Historic Courthouse
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **Order Dismissing Appeal** in RH-TP-08-29,302 was mailed, postage prepaid, by first class U.S. mail on this **8th day of May, 2014** to:

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