

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-10-29,875

In re: 3133 Connecticut Ave., N.W.

Ward Three (3)

**CHRISTINE BURKHARDT and
DON WASSEM**
Tenants/Appellants

v.

KLINGLE CORPORATION, *et al.*
Housing Providers/Appellees

ORDER ON MOTION FOR CONTINUANCE

May 1, 2015

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 in the Rental Accommodations Division (RAD) of the District of the 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 §§ 2-501-510 (2001), 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 the Rental Accommodations and Conversion Division (RACD) of the Department of Consumer and Regulatory Affairs (DCRA) pursuant to the Office of Administrative Hearings Establishment Act, D.C. Law 14-76, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2007 Repl.). The functions and duties of RACD in DCRA were transferred to the RAD in DHCD by § 2003 of the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2010 Repl.).

On December 23, 2104, Tenants/Appellants Christine Burkhardt and Don Wassem (collectively, Tenants)² filed a notice of appeal with the Commission. On April 14, 2015,³ the Commission issued a Notice of Scheduled Hearing and Notice of Certification of Record (Notice of Scheduled Hearing), setting a hearing date for May 7, 2015. On April 21, 2015, the Tenants filed a joint “Requests for Extension of Time to File Appeal Brief(s) and for Postponement of Hearing Until After the Dates Briefs Are Then Due” (Motion for Continuance). The Motion for Continuance requested that the due date for briefing in this case be extended and that the May 7, 2015, hearing be rescheduled for some time after the week of June 29, 2015. Motion for Continuance at 2. Klingle Corporation, B.F. Saul Company, and B.F. Saul Property Company (collectively, Housing Providers) filed an Opposition to the Motion for Continuance on April 30, 2015, asserting that the Motion for Continuance does not provide a “valid, verifiable reason for asking for an extension, much less such a long one.”

The Commission’s regulations provide the following guidance regarding requesting a continuance of a Commission hearing, in relevant part:

3815.1 Any party may move to request a continuance of any scheduled hearing . . . if the motion is served on opposing parties and the Commission at least five (5) days before the hearing or the due date; however, in the event of extraordinary circumstances, the time limit may be shortened by the Commission.

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

² The Commission observes that all filings with it in this matter have so far been captioned with “Kenneth Mazzer, *et al.*” as the appellants, consistent with the caption given by OAH. Because only Ms. Burkhardt and Mr. Wassem have appealed the final order issued by OAH, the Commission, in its discretion, amends the case caption of this appeal for all subsequent pleadings and orders. See 14 DCMR § 3808.1., .2.

³ The Commission’s notice on April 14, 2015, was a reissuance of a notice, issued on April 3, 2015, which was addressed to Ms. Burkhardt and Mr. Wassem at the incorrect addresses.

continuance unless set forth promptly after notice of the hearing has been given.

14 DCMR § 3815 (2004); *see, e.g., Chaney v. Am. Rental Mgmt. Co.*, RH-TP-06-28,366; RH-TP-06-28,577 (RHC Mar. 4, 2013) (finding good cause for a continuance where tenant's counsel was out of the country when the Commission's notice of hearing was issued, and the motion for continuance included counsel's flight reservations); *Salazar v. Varner*, RH-TP-09-29,645 (RHC July 19, 2012) (determining that counsel's conflicting schedule was not good cause for a continuance); *Prosper v. Pinnacle Mgmt.*, TP 27,783 (RHC Jan. 19, 2012) (determining that good cause for a continuance existed where tenant's counsel was in the hospital at the time the Commission issued its notice of hearing, and counsel provided a memorandum from his physician confirming counsel's medical condition).

Administrative tribunals "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. *Prime*, 955 A.2d 178. *See, also, Chaney*, RH-TP-06-28,366; RH-TP-06-28,577; *Johnson v. MPM Mgmt., Inc.*, RH-TP-09-27,294 (RHC July 31, 2012); *Prosper*, TP 27,783.

The Commission observes that the Motion for Continuance was filed on April 21, 2015, more than five (5) days prior to the scheduled hearing on May 7, 2015. Motion for Continuance at 1. Therefore, the Tenants need only show good cause in support of their Motion for Continuance. 14 DCMR § 3815; *see, e.g., Chaney*, RH-TP-06-28,366; RH-TP-06-28,577; *Salazar*, RH-TP-09-29,645; *Prosper*, TP 27,783.

The Commission's notes that Ms. Burkhardt states in the Motion for Continuance that she underwent surgery on April 16, 2015, precisely three (3) weeks prior to the scheduled hearing

date of May 7, 2015, and two (2) days after the Commission issued the Notice of Scheduled Hearing. Motion for Continuance at 1. Ms. Burkhardt states that the surgery “impairs her ability to do desk work for [six] 6 weeks, [and her] current treatment includes synthetic opioids for pain relief.” *Id.* The Commission also notes that the Tenants in this case are not represented by counsel. *See* Motion for Continuance; Notice of Appeal. The Commission has repeatedly explained that it is aware of the central role that *pro se* litigants play in the implementation of the Act, and has recognized that *pro se* litigants may face considerable challenges in prosecuting their claims without legal assistance. *See* Watkis v. Farmer, RH-TP-07-29,045 (RHC Aug. 15, 2013) at n.14; Barnes-Mosaid v. Zalco Realty, Inc., RH-TP-08-29,316 (RHC Sept. 28, 2012); Chen v. Moy, RH-TP-08-29,340 (RHC Mar. 27, 2012); *see also* Goodman v. D.C. Rental Hous. Comm’n, 573 A.2d 1293, 1298-99 (D.C. 1990).

Mindful of such considerations, the Commission, in its reasonable discretion, determines that Ms. Burkhardt’s recent surgery constitutes good cause for a continuance of the hearing in this appeal, and thus grants the Motion for Continuance.⁴ 14 DCMR § 3815; Prime, 955 A.2d 178; Watkis, RH-TP-07-29,045 at n.14; Barnes-Mosaid, RH-TP-08-29,316; Chen, RH-TP-08-29,340. The hearing in this matter is rescheduled for **Tuesday, June 9, 2015 at 10:00 a.m.**, in the Commission’s hearing room located at 441 4th St. NW, Suite 1140N, Washington, DC, 20001. The failure of either party to appear at the scheduled time will not preclude the Commission from hearing the oral argument of the appearing party and/or disposing of the appeal. Failure of an Appellant to appear may result in dismissal of the party’s appeal.⁵

⁴ Having determined that Ms. Burkhardt set forth good cause for the continuance, the Commission does not, and need not rule on whether Mr. Wassem also set forth good cause.

⁵ The Commission notes that on April 29, 2015, Mr. Wassem filed a motion titled “Request to Participate by Telephone, or to Appear via Fellow Member of Unincorporated Nonprofit Association, or to Rely on Written Pleadings” (Motion on Appearance). The Commission will take the Motion on Appearance under consideration and issue a separate order on it.

In light of the continuance of the hearing in this matter, the Commission will also extend the time for the parties to file appellate briefs, in accordance with 14 DCMR § 3802.7-.8,⁶ as follows: a brief or briefs from Christine Burkhardt and Don Wassem, the Tenants/Appellants, are due **May 13, 2015**;⁷ a brief from the Housing Providers is due **June 2, 2015**.

SO ORDERED



CLAUDIA L. MCKOIN, COMMISSIONER

⁶ 14 DCMR § 3802.7-.8 provide as follows:

3802.7 Parties may file briefs in support of their position within five (5) days of receipt of notification that the record in the matter has been certified.

3802.8 Parties may file responsive briefs within ten (10) days of service of the pleading to which the response is being filed.

⁷ The Commission notes that, pending its decision on the instant motion, the Tenants filed a joint Brief on Appeal on April 29, 2015, which they state does not “fully brief the appeal issues.” Brief on Appeal at 1. If the Tenants exercise the option the Commission now provides and file a more complete briefing on the issues, the Commission, rather than permit the Tenants a “second bite at the apple,” will treat the April 29, 2015, filing as struck, and will not consider the arguments therein.

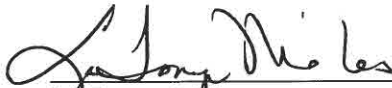
CERTIFICATE OF SERVICE

I certify that a copy of the **ORDER** in RH-TP-10-29,875 was served by first-class mail, postage prepaid, this **1st day of May, 2015**, to:

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