

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-12-30,181

In re: 460 L Street, NW, Apt. 319

Ward Six (6)

TONYA ALLEN
Tenant/Appellant

v.

LC CITY VISTA LP
Housing Provider/Appellee

ORDER DISMISSING APPEAL

April 29, 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 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, the District of Columbia Administrative Procedure Act (DCAPA), D.C. Official Code §§ 2-501-2-510 (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 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 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).

PROCEDURAL HISTORY

On January 13, 2012 Tonya Allen (Tenant), residing at 460 L Street, NW, (Housing Accommodation) filed Tenant Petition 2012-DHCD- TP 30,181 (Tenant Petition) with the Rent Administrator in the RAD. The petition as later amended alleged the following violations of the Rental Housing Act:²

1. The Housing Accommodation was not properly registered with RAD.
2. The Housing Provider failed to file the correct rent increase forms with RAD.
3. The rent charge filed with the RAD exceeded the legally calculated rent for the unit.
4. Services and/or facilities provided as part of the tenancy had been substantially reduced or permanently eliminated; and
5. Housing Provider took retaliatory action against Tenant in violation of the Act because Tenant exercised Tenant's rights under the Act.

See Tenant Petition at 4; R. at 18.

A Final Order was issued on June 25, 2013, Tonya Allen v. LG City Vista LP, 2012-DHCD-TP 30,181 (OAH June 25, 2013) (Final Order).³ The ALJ made the following Conclusions of Law in the Final Order:⁴

1. The Tenant's claims that services and facilities had been substantially reduced or eliminated, and that the Housing Provider took retaliatory action against her prior to January 13, 2012, are barred under the doctrine of *res judicata*.

² The Commission herein summarizes the violations stated in the Tenant's Petition.

³ In light of the Commission's decision that it lacks jurisdiction to address the merits of this appeal, *see infra*, the Commission will not recite the ALJ's findings of fact in this Order. The ALJ's findings of fact and conclusions of law can be found in the Final Order. See Final Order at 1-19; R. at 215-33.

⁴ The language of the Conclusions of Law stated herein is a summary from the Final Order.

2. Tenant carried her burden of proof that Housing Provider failed to register the Housing Accommodation properly, but did not prove that the failure was willful and therefore warranted the imposition of a fine.
3. Tenant carried her burden of proof that Housing Provider failed to file the proper forms, but did not prove that the failure was willful and thus warranted the imposition of a fine.
4. Tenant failed to carry her burden of proof that the rent charged filed with the Rent Administrator exceeded the legally calculated rent for her unit.
5. Tenant failed to carry her burden of proof regarding the existence of any substantial reductions and/or eliminations in services or facilities.
6. Tenant failed to carry her burden of proof that Housing Provider took retaliatory action against her.

Final Order at 5-15; R. at 219-29.

On July 15, 2013 the Tenant filed a Motion for Reconsideration, which the ALJ construed to be a Motion for Relief from the Final Order under 1 DCMR §§ 2938.1 and 2828.4.⁵

On August 29, 2013 the ALJ issued its Order Denying Motion for Reconsideration (hereinafter Order on Reconsideration).⁶

On September 17, 2013, the Tenant filed with the Commission a Notice of Appeal. The Tenant's Notice of Appeal states: "... [t]he mediation ordered by Judge Cobbs did not take place. Judge Cobbs did not meticulously review testimony and documents submitted. I find that

⁵ 1 DCMR § 2938.1 provides the following: "Motions for reconsideration, a new hearing, or relief from a final order shall be decided according to the Rules found in Section 2828."

1 DCMR § 2828.4 provides the following:

If any party files a motion for reconsideration or for a new hearing within the ten (10) calendar day deadline, the time for seeking judicial review of a final order does not start to run until the Administrative Law Judge rules on the motion, or the motion is denied as a matter of law under Subsection 2828.15.

⁶ The ALJ states that he construed the Tenant's Motion for Reconsideration to be a Motion for Relief from the Final Order under 1 DCMR §§ 2938.1 and 2828.4. R. at 296. *See supra* note 5.

Judge Cobb[s]' [findings of] fact and conclusion[s] of law in the Final Order on June 25, 2013, are erred [sic]" See Tenant's Notice of Appeal at 1.⁷

On March 13, 2014, Counsel for the Housing Provider filed with the Commission a Motion to Dismiss the Tenant's Notice of Appeal (Housing Provider's Motion to Dismiss) for the following reasons: the Notice of Appeal was untimely according to 14 DCMR §§ 3802, 3816.3, 3816.5 (2004); and failed to identify errors of law or fact according to 14 DCMR § 3802.5(b). See Housing Provider's Motion to Dismiss at 5-6.⁸

On March 26, 2014, the Tenant filed a Motion for Continuance stating that she did not receive the Housing Provider's Motion to Dismiss until March 22, 2014 and was unaware that the Housing Provider's counsel had not received the Notice of Appeal. The Tenant also opposed

⁷ The Commission is aware of the central role *pro se* litigants play in the implementation of D.C. OFFICIAL CODE §§ 42-3501.01 -3509.07 (2001) and have considered that in its review of the Tenant's *pro se* Notice of Appeal in this case. See Watkis v. Farmer, RH-TP-07-29,045 (RHC Aug. 15, 2013) at n.14 ("In addressing the Housing Provider's *pro se* Notice of Appeal, the Commission is mindful of the important role that *pro se* [sic] litigants play in the Act's enforcement.) See also, Goodman v. D.C. Rental Hous. Comm'n, 573 A.2d 1293, 1298-99 (D.C. 1990); Cohen v. D.C. Rental Hous. Comm'n, 496 A.2d 603, 605 (D.C. 1985); 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); Levy v. Carmel Partners, Inc., RH-TP-06-28,830; RH-TP-06-28,835 (RHC Mar. 19, 2012). The Commission has long recognized that *pro se* litigants can face considerable challenges in prosecuting their claims without legal assistance. See Levy, RH-TP-06-28,830; RH-TP-06-28,835 (citing Kissi v. Hardesty, 3 A.3d 1125, 1131 (D.C. 2010)). Especially in cases involving remedial statutes like the Act, courts and administrative agencies have been more disposed "to grant leeway to" *pro se* litigants. See Barnes-Mosaid, RH-TP-08-29,316; Chen, RH-TP-08-29,340; Levy, RH-TP-06-28,830; RH-TP-06-28,835. However, the District of Columbia Court of Appeals (DCCA) and the Commission have been clear that "the court may not act as counsel for either litigant." See *id.*

⁸ The Commission's rules require that an answer to a notice of appeal to be filed within 10 days of service of the notice of appeal. 14 DCMR § 3802.6. In addition, 14 DCMR § 3816.5 provides for an additional three (3) days if service is by mail. The Tenant filed her Notice of Appeal on September 17, 2013. The Housing Provider filed its Motion to Dismiss on March 13, 2014, beyond the thirteen (13) days allowed for filing an answer, as noted above. See 14 DCMR §§ 3802.6, 3816.5. The Housing Provider notes in its filing that it did not receive service of the Tenant's Notice of Appeal until being contacted by the Commission's Clerk of the Court to schedule a hearing. See Housing Provider's Motion to Dismiss, n.1 at 5. The Tenant's Notice of Appeal includes a Certificate of Service dated September 17, 2013 stating that service was by mail to the Housing Provider's counsel at 1620 L St., NW, Suite 900, Washington, DC 20036. See Tenant's Notice of Appeal at 2. Based on the review of the record and regulations, the Commission determines that the Motion to Dismiss was untimely, and therefore, will not consider the issues raised by the Housing Provider in its motion. See 14 DCMR §§ 3802.6, 3816.5.

the Housing Provider's Motion to Dismiss without stating the reasons for opposition. On March 31, 2014, the Housing Provider filed an Opposition to Motion for Continuance for the same reasons stated in its Motion to Dismiss.

DISCUSSION OF THE ISSUES

The Commission has consistently held that under the Act and its regulations time limits for filing are mandatory and jurisdictional. *See e.g., Dorchester House, Assocs., LLC v. Tenants of 2480 16th St., NW*, RH-SF-09-20,098 (RHC Sept. 16, 2013) (dismissing a notice of appeal that was filed after the expiration of the ten day period under 14 DCMR § 3802.2); *Haendel v. Budd*, TP 27,598 (RHC May 21, 2007) (dismissing appeal that was untimely filed). In addition, the Commission is prohibited from extending the time to file a notice of appeal under 14 DCMR § 3816.6.⁹

Under the Act, the Commission's review of an appeal is limited to the issues raised in the notice of appeal; however the Commission has the discretion to raise the issue of jurisdiction *sua sponte*. *See* 14 DCMR § 3807.4 (2004). *See Vista Edgewood Terrace v. Rascoe*, TP 24,858 (RHC Oct. 13, 2000) ("[N]ot only may a party raise jurisdiction for the first time on appeal, but an appellate court may *sua sponte* address the issue of the court's jurisdiction") (citing *Brandywine Ltd. P'ship v. D.C. Rental Hous. Comm'n*, 631 A.2d 415, 416-17 (D.C. 1991)); *CIH Props. v. Torain*, TP 24,817 (RHC July 17, 2000); *King v. Remy*, TP 20,962 (RHC May 18, 1988) (reversing decision of Rent Administrator and dismissing tenant petition for lack of jurisdiction). *See also Sindram v. Tenacity Grp.*, RH-TP-07-29,094 (RHC Sept. 14, 2011).

⁹ 14 DCMR § 3816.6 provides the following: "The Commission, for good cause shown, may enlarge the time prescribed, either on motion by a party or on its own initiative; provided, that the Commission does not enlarge the time for filing a notice of appeal."

Under the Act, the Tenant had ten (10) business days from the issuance of the Final Order, plus an additional three (3) days if mailed, to file her Notice of Appeal. *See* 14 DCMR §§ 3802.2, 3816.3.¹⁰ Since the ALJ's Final Order was dated June 25, 2013, the Notice of Appeal was required to be filed under the Commission's rules no later than July 15, 2013.¹¹ *See* 14 DCMR §§ 3802.2, 3816.3. Here, the Tenant filed her Notice of Appeal on September 11, 2013, more than fifty (50) days after the mandatory filing date under the Act. *See* 14 DCMR §§ 3802.2, 3816.3. The Commission determines that the filing of the Notice of Appeal did not comply with the applicable filing requirements under 14 DCMR §§ 3802.2, 3816.3, and was thus untimely.

For the reasons stated herein, the Commission dismisses the Tenant's Notice of Appeal for lack of jurisdiction. *See* 14 DCMR §§ 3802.2, 3816.3, -.6; Dorchester House, Assocs., LLC, RH-SF-09-20,098; Haendel, TP 27,598. Because the Commission dismisses the Notice of Appeal, the Commission will not consider the Housing Provider's Motion to Dismiss, the Tenant's Motion for Continuance, the Housing Provider's Opposition to Motion for Continuance or the merits of the Notice of Appeal.

¹⁰ 14 DCMR § 3802.2 provides the following: "A notice of appeal shall be filed by the aggrieved party within ten (10) days after a final decision of the Rent Administrator is issued; and, if the decision is served on the parties by mail, an additional three (3) days shall be allowed."

14 DCMR § 3816.3 provides the following: "When the time period prescribed or allowed is ten (10) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation."

¹¹ In this case, the Tenant filed a Motion for Reconsideration. A Motion for Reconsideration must be filed within ten (10) calendar days of the Final Order per 1 DCMR §§ 2828.3, 2812.5, .7. The ALJ construed the Motion for Reconsideration as a Motion for Relief because it was not filed within ten (10) days as required by 1 DCMR § 2938.1 and 2828.4. *See supra* note 5, at 8. A Motion for Relief does not stay the time for seeking judicial review from the Commission of an OAH final order under OAH rule 1 DCMR § 2828.8.

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

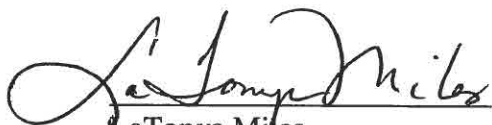
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **DECISION AND ORDER** in RH-TP-12- 30,181 was mailed, postage prepaid, by first class U.S. mail on this **29th day of April, 2014** to:

Allen v. LC City Vista LP
2012-DHCD-TP 30,181 (Order Dismissing Appeal)
April 29, 2014

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A handwritten signature in black ink, appearing to read "LaTonya Miles". The signature is fluid and cursive, with a large initial "L" and "M".

LaTonya Miles
Clerk of Court
(202) 442-8949