

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-12-30,230

In re: 2800 Jasper Road, SE, Unit 104

Ward Eight (8)

KMG MANAGEMENT, LLC
Housing Provider/Appellant

v.

KEVIN RICHARDSON
Tenant/Appellee

ORDER ON MOTION FOR CONTINUANCE

January 28, 2014

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from a decision and 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 (Rental Housing 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 The Office of Administrative Hearings (OAH) assumed jurisdiction over the conduct of hearings on tenant petitions from the RACD and the Rent Administrator 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 the Rental Accommodations Division (RAD) of 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 (2001 Supp. 2008)).

I. PROCEDURAL HISTORY

On May 11, 2012, Tenant/Appellee Kevin Richardson (Tenant), residing at 2800 Jasper Road, SE, Unit 104, Washington, D.C. 20020 (Housing Accommodation), filed Tenant Petition RH-TP-12-30,230 (Tenant Petition) against Housing Provider/Appellant KMG Management. *See* Tenant Petition at 1-3; R. at 48-50. On September 11, 2013, ALJ Wanda Tucker issued a final order, Richardson v. KMG Mgmt., RH-TP-12-30,230 (OAH Sept. 11, 2013) (Final Order). On September 26, 2013, the Housing Provider filed a Notice of Appeal (“Notice of Appeal”) with the Commission. Notice of Appeal at 1-3. The Commission scheduled a hearing in this matter for January 29, 2014, and notice was served on both parties, through counsel, by first-class mail, postage prepaid, on December 11, 2013. *See* Notice of Scheduled Hearing at 3.

On January 27, 2014, the Housing Provider filed “Appellant’s Motion for A Continuance” (Motion for Continuance). The Housing Provider’s reason for requesting the continuance was that “Appellant’s Attorney has suffered a medical emergency and is unable to attend [the Commission’s] hearing.” Motion for Continuance at 1. The Tenant filed “Appellee’s Opposition to Appellant’s Motion for a Continuance and Appellee’s Motion to Dismiss the Appeal” (Opposition) on January 27, 2012.² In the Opposition, the Tenant states that it has been nearly one (1) year since the OAH hearing occurred on February 6, 2013, that it has been more

² The Tenant asserts in the Opposition that the Notice of Appeal was untimely under 14 DCMR §§ 3801.6 and 3802.2 (2004), and thus should be dismissed. *See* Opposition at 1-2. The Commission notes that a party has ten (10) days after a final decision is issued to file an appeal, in accordance with 14 DCMR § 3802.2 (2004). Furthermore, in accordance with the regulations governing the computation of time, at 14 DCMR § 3816 (2004), when a time period is ten (10) days or less, “intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.” 14 DCMR § 3816.3 (2004). As the Tenant concedes, three (3) days are added to any prescribed time period when a party serves documents by mail. 14 DCMR § 3816.5 (2005); Opposition at 2.

The Commission notes that the ALJ’s Final Order in this case was issued on September 11, 2013, and served on both parties by mail. *See* Final Order at 1, 30; R. at 112, 141. Therefore, in accordance with 14 DCMR §§ 3802.2, 3816.3, and 3816.5 (2004), the Commission determines that the time period for filing an appeal in this case expired on September 30, 2013 – four (4) days after the Housing Provider filed its Notice of Appeal on September 26, 2013. *See* Notice of Appeal at 1. Accordingly, the Commission is satisfied that the Notice of Appeal was timely, and denies the Tenant’s request to dismiss the appeal.

than four (4) months since the ALJ issued her Final Order, and that the Tenant wishes to resolve this case quickly, because it is the Tenant's understanding that the Housing Provider has filed for bankruptcy, and that the Housing Accommodation will soon be repossessed by the bank.³

Opposition at 1.

II. DISCUSSION

The Housing Provider, through counsel, has provided no legal citations to the Act, its regulations, or relevant caselaw in support of its Motion for Continuance. *See* Motion for Continuance at 1. While the Commission will ordinarily construe *pro se* pleadings liberally, the Commission observes that this is not a *pro se* case – both the Tenant and the Housing Provider are represented by counsel -- and the Motion for Continuance was filed by counsel for the Housing Provider. *See Jackson v. Peters*, RH-TP-12-28,898 (RHC Sept. 27, 2013); *Dejean v. Gomez*, RH-TP-07-29,050 (RHC Aug. 15, 2013); *Barnes-Mosaid v. Zalco Realty, Inc.*, RH-TP-08-29,316 (RHC Sept. 28, 2012).

The Commission has consistently held that the proponent of an order has the burden of proof. D.C. OFFICIAL CODE § 2-509(b) (2001). *See, e.g., Carter v. Paget*, RH-TP-09-29,517 (RHC Dec. 11, 2013); *Barac Co. v. Tenants of 809 Kennedy St., N.W.*, VA 02-107 (RHC Sept. 27, 2013); *Seyoum v. Harper*, RH-TP-10-29,971 (RHC July 10, 2013). Accordingly, as the proponent of the Motion for Continuance in this case, the Housing Provider bears the burden of proving each fact necessary for the granting of the continuance. *See* Motion for Continuance. *See also* D.C. OFFICIAL CODE § 2-509(b) (2001); *Carter*, RH-TP-09-29,517; *Barac Co.*, VA 02-107; *Seyoum*, RH-TP-10-29,971.

³ The Commission notes that the Tenant has not provided any supporting documents or other references to support its contentions that the Housing Provider has filed for bankruptcy, or that the Housing Accommodation will be repossessed. *See* Opposition at 1-2.

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 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 at 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 notes that the Motion for Continuance was filed on Monday, January 27, 2013, less than five (5) days prior to the Commission's scheduled hearing on Wednesday, January 29, 2013. *See* Motion for Continuance at 1. Therefore, the Commission observes that it may only grant the Motion for Continuance if the Commission is satisfied that the Housing Provider has set forth "extraordinary circumstances." 14 DCMR § 3815.1 (2004). Based on its review of the Motion for Continuance, the Commission is unable to determine that extraordinary circumstances exist to justify the granting of a continuance at this late date. *See* Motion for Continuance.

The Commission notes that, although the Housing Provider contends that counsel has suffered a "medical emergency" that prevents her from attending the scheduled hearing, the Motion for Continuance fails to specify the date the medical emergency occurred, the nature of the medical emergency, or any other details in addition to this "bare assertion" that would allow the Commission to determine whether counsel's "medical emergency" constitutes "extraordinary circumstances" in accordance with 14 DCMR § 3815.1 (2004). *Compare* Motion for Continuance, *with Chaney*, RH-TP-06-28,366; RH-TP-06-28,577; *Prosper*, TP 27,783. *Cf.* *Belmont Crossing v. Jackson*, TP 28, 292 (RHC Mar. 6, 2009) (determining that the bare assertion that the housing provider was exempt from the Act did not constitute a *prima facie* defense, without additional evidentiary support); *Stone v. Keller*, TP 27,033 (RHC Feb. 26, 2009) (determining that the tenant's bare assertion that her rent was illegal was not a sufficient explanation of the issue on appeal to satisfy the Commission's requirement of a clear and concise statement of error). Furthermore, the Commission's regulations and case precedent are clear that absence or unavailability of counsel are not sufficient justification for a continuance, even where the continuance is requested more than five (5) days prior to the scheduled hearing. 14 DCMR §

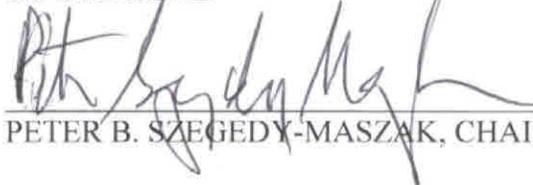
3815.3 (2004); Salazar, RH-TP-09-29,645; Johnson v. Dorchester House Assocs., RH-TP-07-29,077 (RHC Feb. 19, 2009) (determining that tenant's failure to obtain legal counsel was not "good cause" for a continuance).

Accordingly, the Commission, in its reasonable discretion, is not persuaded to grant a continuance in this case for the following reasons: (1) Housing Provider filed the Motion for Continuance only two (2) days before the scheduled hearing date; (2) Housing Provider's counsel failed to provide any evidentiary support, or sufficient factual details, for her otherwise "bare assertion" of a medical emergency sufficient to constitute "extraordinary circumstances," as required by 14 DCMR § 3815.1 (2004) to justify the granting of a continuance less than five (5) days before the scheduled hearing date; and (3) the uncontested opposition by the Tenant to the Motion for Continuance based on the length of time that this case has been pending, both before OAH and the Commission.

III. CONCLUSION

For the foregoing reasons, the Housing Provider's request for a continuance is denied, and the Commission will hold a hearing in this case on the originally scheduled hearing date, January 29, 2014.

SO ORDERED



PETER B. SZEGEDY-MASZAK, CHAIRMAN

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER ON MOTION FOR CONTINUANCE** in **RH-TP-12-30,230** was mailed, postage prepaid, by first class U.S. mail on this **28th day of January, 2014** to:

Rabihah Scott
Price Benowitz LLC
409 7th Street, NW, Suite 200
Washington, DC 20001

Thomas Craven
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037

LaTonya Miles
Clerk of Court
(202) 442-8949