

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-12-30,279

In re: 2727 29th Street, N.W., Apt. 410

Ward Three (3)

SMITH PROPERTY HOLDING THREE (DC), L.P.
Housing Provider/Appellant

v.

MUNEER A. SHEIKH
Tenant/Appellee

ORDER

October 17, 2016

EPPS, COMMISSIONER. This case is before the Rental Housing Commission (“Commission”) pursuant to an appeal filed February 16, 2016, (“Second Notice of Appeal”) by the housing provider/appellant Smith Property Holdings Three (DC), L.P. (“Housing Provider”) from a final order issued by the Office of Administrative Hearings, Sheikh v. Smith Prop. Holdings Three, (DC), L.P., 2012-DHCD-TP-30,279 (OAH Jan. 29, 2016) (“Final Order after Remand”). The pending issue is an October 4, 2016, Motion for Substitution of Parties (“Motion for Substitution”), requesting to substitute tenant/appellee Muneer A. Sheikh (“Tenant”) with Waqas Sheikh, in his capacity as Administrator of the Estate of Muneer A. Sheikh (“Personal Representative”).

In his Motion to Withdraw as Counsel for Tenant/Appellant, filed on September 16, 2016, (“Motion to Withdraw”), Attorney Marc Borbely, of the D.C. Tenant’s Rights Center represented that his client, the Tenant, had died. *See* Motion to Withdraw at 1.

In an order issued on September 15, 2016, the Commission determined that Attorney Borbely's Motion to Withdraw constituted a suggestion of death of the Tenant, under D.C. App. R. 43(a)(1) and Super. Ct. Civ. R. 25(a)(1).¹ Sheikh v. Smith Prop. Holdings Three (DC) LP, RH-TP-12-30,279 (RHC Sept. 15, 2016) ("September 15 Order"); *see also* 14 DCMR § 3828.1 (2004);² Hardy v. Jenkins, RH-TP-10-30,009 (RHC Mar. 29, 2012); Killingham v. Marina View Trustee, LLC, VA 07-017 (RHC Mar. 1, 2011); Mersha v. Marina Towers Apartments Town Ctr., Ltd. P'ship, TP 24,970 (RHC Feb. 19, 2003). The September 15 Order provided 90 days, or until December 5, 2016, for a duly-appointed personal representative of the Tenant to file a motion for substitution, substituting a personal representative as a party to this case in lieu of the Tenant. September 15 Order at 4. The Commission cautioned that if no personal representative filed a motion for substitution by December 5, 2016, the Commission would dismiss the Tenant as a party to this appeal, *with prejudice. Id.*

¹ D.C. App. R. 43(a)(1) provides the following:

If a party dies after a notice of appeal has been filed or while a proceeding is pending in this court, the decedent's personal representative may be substituted as a party on motion filed with the Clerk by the representative or by any party. A party's motion must be served on the representative in accordance with Rule 25. If the decedent has no representative, any party may suggest the death on the record, and the court may then direct appropriate proceedings.

Super. Ct. Civ. R. 25(a)(1) provides the following:

If a party dies and the claim is not thereby extinguished, the Court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and maybe served in any judicial district. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

² 14 DCMR § 3828.1 provides the following:

When these rules are silent on a procedural issue before the Commission, that issue shall be decided by using as guidance the current rules of civil procedure published and followed by the Superior Court of the District of Columbia and the rules of the District of Columbia Court of Appeals.

On October 4, 2016 the Motion for Substitution was filed with the Commission by the Personal Representative. A copy of the Tenant's death certificate, as well as a certified copy of the Letters of Administration from the Superior Court For The State of Washington, County of King, dated September 7, 2016, appointing the Personal Representative as the administer of the estate of the Tenant. *See In re: Estate of Sheikh*, No. 16-4-05350-2 SEA (Super. Ct. Wash. Sept. 7, 2016).

On October 14, 2016 the Housing Provider filed an opposition to the Motion for Substitution ("Opposition"). In its Opposition, the Housing Provider contests whether the rent refund provided by the Final Order after Remand survives as the Tenant's death, which was not specifically addressed in the underlying Motion for Substitution.

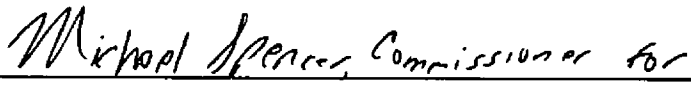
In recognition of the new issues raised by the Housing Provider in its Opposition to the Motion for Substitution, the Commission, in the exercise of its reasonable discretion, and in keeping with the remedial purpose of the Act³ and considerations of due process,⁴ determines that the Personal Representative should be provided a reasonable time period to prepare a Memorandum of Law on the issues raised in the Housing Provider's Opposition.

³ The remedial purposes of the Act are intended "to protect low and moderate income tenants from the economic harm of uncontrolled increases in rents, and to maintain a sufficient stock of affordable rental units for such low and moderate income tenants in the District of Columbia." D.C. Official CODE §42-3501.02; *see, e.g., Goodman v. D.C. Rental Housing Commission*, 573 A.2d 1293, 1299-1300; *Carmel Partners, Inc. v. Levy*, RH-TP-06-28,830, RH-TP-06-28,835 (RHC Apr. 18, 2012); *1773 Lanier Place, N.W., Tenants' Ass'n v. Drell*, TP 27,344 (Sept. 9, 2009); *Borger Mgmt., Inc v. Lee*, RH-TP-06-28,854 (RHC Mar. 6, 2009).

⁴ "[D]ue process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances, but rather it is flexible and calls for such procedural protections as the particular situation demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976)) (*quoted in Richard Milburn Pub. Charter Alt. High Sch. V. Calritz*, 798 A. 2d 531, 542 (D.C. 2002)).

As such, in response to the Housing Provider's Opposition, the Personal Representative shall be afforded the opportunity to submit a Memorandum of Law on the issues raised in the Opposition by COB on Thursday, October 27, 2016.⁵

SO ORDERED.



DIANA HARRIS EPPS, COMMISSIONER

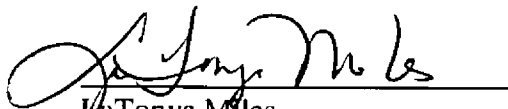
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER** in RH-TP-12-30,279 was mailed, postage prepaid, by first class U.S. mail on this **17th day of October, 2016**, to:

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⁵ See 14 DCMR § 3814.3 ("Any party may file a response in opposition to a motion within five (5) days after service of the motion."); 14 DCMR § 3816.5 ("If a party is required to serve papers within a prescribed period and does so by mail, three (3) days shall be added to the prescribed period to permit reasonable time for mail delivery.").