

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 HOLDINGS THREE (DC), L.P.
Housing Provider/Appellant

v.

MUNEER A. SHEIKH
Tenant/Appellee

ORDER ON SUBSTITUTION

November 30, 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 a 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 Smith Prop. Holdings Three (DC), L.P. v. Sheikh, 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) (Order Denying Motion to Dismiss); Mersha v. Marina Towers Apartments Town Ctr., L.P., TP 24,970 (RHC Feb. 19, 2003) (Order on Motion to Intervene). The September 15 Order held the Motion to Withdraw in abeyance and 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

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.

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.*

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 administrator 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 after 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, 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 determined 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, RHTP-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." *Matthews v. Eldridge*, 424 U.S. 319, 334 (1976) (*quoted in Richard Milburn Pub. Charter Alt. High Sch. v. Cafritz*, 798 A. 2d 531, 542 (D.C. 2002)).

On October 27, 2016, the Personal Representative filed a reply to the Opposition. (“Reply”). In its Reply, the Personal Representative, in support of the viability of the Tenant Petition, urged the Commission to view the matter as a dispute that sounds in contract and that therefore is not extinguished upon death of a party. Reply at 2-3. Although not persuaded by either party’s arguments, the Commission grants the Tenant’s Motion for Substitution.⁵

This is not the first time the Commission has been called upon to address the impact of the death of a party on an appeal. See Killingham, RH-TP-06-28,528; Mersha, TP 24,970; see also Mersha v. Marina Towers Apts. Town Ctr. Ltd. P’ship, TP 24,970 (RHC March 25, 2003) (Order Dismissing Appeal). The Commission has previously noted that the death of the appellant “deprive[s] it of a party.” Killingham RH-TP-06-28,528 at 2. In the absence of a specific regulation addressing the death of a party under the Act, 14 DCMR § 3828 (2004) instructs the Commission to “us[e] 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” (“DCCA”).⁶ Further, there is no dispute between the parties⁷ that the motion for substitution is guided by D.C. OFFICIAL CODE § 12-101, captioned “Survival of Rights of Action” (“Survival Statute”).⁸

⁵ The Commission notes that, although the Tenant’s lease is a contract with the Housing Provider, claims arising under the Act are separate from actions to enforce contracts. D.C. OFFICIAL CODE § 11-921(a) makes clear that the “the appropriate venue for adjudicating a tenant’s a breach of contract claim is through a civil action before the D.C. Superior Court.” See Tenants of 3133 Connecticut Avenue, N.W. v. Klingle, NV 09-001 (Sept. 1, 2015) at 28 (Tenants appropriately filed suit on claims similar to their issue in this appeal in the Superior Court, thereby not depriving them of an appropriate venue and remedy for their claim.).

⁶ See *supra* n.2.

⁷ The Personal Representative makes two, alternative arguments: first, that the Tenant’s claim under the Act is in the nature of a contract claim, which, at common law, does not abate upon death; and second, that even if the claim under the Act would not survive at common law, the Survival Statute preserves it. See Reply at 4; Opposition at 3.

⁸ D.C. OFFICIAL CODE § 12-101 provides:

The Commission gives full effect to the unambiguous, plain meaning of D.C. OFFICIAL CODE § 12-101. *See Berryman v. Thorne*, 700 A.2d 181,184 (D.C. 1997) (“Readily disregarding the plain meaning of a statute creates a risk that the courts are exercising their own desires instead of those of the legislature.”); *Gibson v. Johnson*, 492 A.2d 574, 577-78 (D.C. 1985) (holding that court will not look beyond plain, unambiguous language of statute so long as it does not produce an absurd result). The Commission is satisfied that the phrase “a right of action has accrued for any cause” plainly encompasses the Tenant’s claim for a rent refund under the Act. D.C. OFFICIAL CODE § 12-101; *see* D.C. OFFICIAL CODE § 42-3509.01 (Penalties).

The Housing Provider maintains, however, that the phrase “right of action” in the Survival Statute does not include administrative claims. *See* Opposition at 4. A “right of action,” the Housing Provider asserts, means only the “right to presently enforce a cause of action; operative facts giving rise to a right of action comprise a cause of action.” *Id.* (quoting *Shiflet v. Eller*, 319 S.E. 2d 750 (Va. 1984); *see also* BLACK’S LAW DICTIONARY at 1349 (8th ed.) (defining “right of action” as “1. The right to bring a specific case to court [or] 2. A right that can be enforced by legal action; a chose in action. Cf. CAUSE OF ACTION.”). The Housing Provider argues that the Tenant did not have a “right of action” that could be preserved by the Survival Statute at the time of his death because the Commission (and OAH) have primary jurisdiction to determine rent levels and refunds, *see Drayton v. Poretsky Mgmt., Inc.*, 462 A.2d 1115, 1120 (D.C. 1983), and the Tenant cannot enforce a decision of the Commission in court until the administrative process has been exhausted, *see Strand v. Frankel*, 500 A.2d 1368, 1372-75 (D.C. 1985). Opposition at 4-5.

On the death of a person in whose favor or against whom a right of action has accrued for any cause prior to his death, the right of action, for all such cases, survives in favor of or against the legal representative of the deceased.

The doctrine of “primary jurisdiction comes into play whenever enforcement of the claim requires the resolution of issues, which under a regulatory scheme, have been placed within the special competence of an administrative body.” Mitchell v. Frank Emmet Real Estate, LLC, RH-TP-14-30,552 (RHC June 3, 20016) at 11 (citing Bedell v. Clark, TP24,979 (RHC Apr. 29, 2003) at 6). As a result, the Landlord and Tenant Branch of the Superior Court may not undertake to adjudicate the validity of a rent increase because it falls solely within the jurisdiction of this administrative court. See Mitchell, RH-TP-14-30,552 at 6.

Contrary to the Housing Provider’s contentions, the proposition that exhaustion of the administrative process is a precondition to a “right of action” is not supported by the case law cited. Rather, the DCCA has explained that a court action to enforce a rent refund order under the Act is not an adjudication on the merits of a housing provider’s liability; it is, rather, “a new, wholly independent trial court action to enforce, in effect, a final judgment into which the merits of the original claim have merged.” Strand, 500 A.2d at 1373. “Conceptually, . . . an agency decision awarding money damages is analogous to . . . a money judgement.” *Id.* at n.9; see also Mitchell v. Gales, 61 A.3d 678, 684 (D.C. 2013);⁹ Cafritz v. D.C. Rental Hous. Comm’n, 615 A.2d 222, 226-27 (D.C. 1992) (administrative orders must be enforced in Superior Court, not by

⁹ In Mitchell, the DCCA explained the distinction between Commission orders and actions to obtain a judgment in Superior Court as follows:

This court reaffirmed this prohibition on collateral attacks of prior judgments in Strand v. Frenkel, 500 A.2d 1368 (D.C. 1985). Much as in this case, the appellees in Strand had successfully defeated an administrative judgment by collaterally attacking its validity in an enforcement proceeding in Superior Court. We reversed, explaining that the administrative proceeding “finally determines the merits of the claim after final agency action and (if requested) appellate court review.” *Id.* at 1373. Any later court proceeding “to enforce a finally adjudicated liability,” by contrast, “[wa]s a new, wholly independent trial court action to enforce, in effect, a final judgment into which the merits of the original claim have merged.” *Id.* Moreover, “[b]ecause of such merger, the underlying merits of the judgment are immune from collateral attack in an enforcement action; principles of claim preclusion (res judicata) bar such inquiry.” *Id.* (citing Henderson v. Snider Bros., Inc., 439 A.2d 481, 485 (D.C. 1981) (en banc); Restatement (Second) of Judgments § 18).

61 A.3d at 683-84 (alterations original).

the Commission). Therefore, the Commission is satisfied that the Tenant's administrative claim constitutes a "right of action" that accrued under the Act before his death. D.C. OFFICIAL CODE § 12-101; Strand, 500 A.2d at 1373.¹⁰

Moreover, assuming for the sake of argument that the meaning of "right of action" in the Survival Statute may be ambiguous with respect to administrative claims, the Commission recognizes that the Rental Housing Act and the Survival Statute are remedial acts, to be interpreted liberally to effectuate their purposes. See Goodman v. D.C. Rental Hous. Comm'n, 573 A. 2d 1293, 1299 (D.C. 1990) ("The Act is remedial in character. Like other such legislation, it should be liberally construed to achieve its purposes." (citations omitted)); Greater Se. Cmty. Hosp. v. Williams, 482 A.2d 394, 396 (D.C. 1983) ("this jurisdiction has recognized that . . . survival statutes are remedial acts, to be liberally interpreted to effectuate their purposes").¹¹ The Commission notes that an examination of the history of the survival statute and its amendments reveals that the legislature specifically broadened the language of the survival statute to apply to "any cause of action." See Report of the Council of the District of Columbia, Committee on the Judiciary, "Bill 2-52, The District of Columbia General Survival of Tort Actions Act" (March 8, 1978) (summarizing history of legislative changes in survival statute). The Act is set out to "protect low- and moderate-income tenants from the erosion of their income from increased housing costs." Goodman, 573 A. 2d at 1299. The Commission observes that a rent refund makes a tenant whole for income diverted to unlawful rent increases. See D.C. OFFICIAL CODE § 42-3509.01(a). In consideration of the remedial purposes of the Act

¹⁰ The Commission is also satisfied that this will not produce an absurd result where an administrative decision will be unenforceable in court because the judgment, and therefore later right of action, if any, will accrue to the Personal Representative as the substituted party.

¹¹ See also Jones v. Pledger, 363 F.2d 986 (D.C. Cir. 1966); Hord v. National Homeopathic Hospital, 102 F.Supp. 792 (D.D.C. 1952), *aff'd* 204 F.2d 397 (D.C. Cir. 1953); Calvert v. Terminal Taxicab Co., 48 App. D.C. 119, 121 (D.C. 1918); see also Van Beeck v. Sabine Towing Co., 300 U.S. 342 (1937);

and the broad legislative intent of the Survival Statute, the Commission is not persuaded that a tenant's estate should not receive the benefit of that remedy.¹²

Thus, given the clear direction in the statute, the Commission remains satisfied that the administrative right of action in this matter did not abate with the death of the Tenant. D.C. OFFICIAL CODE § 12-101; Strand, 500 A.2d at 1373. To hold otherwise would perpetuate the wrongs that the Act seeks to right. Goodman, 573 A.2d at 1299. Therefore, absent clear guidance that the legislature intended the results put forth by the Housing Provider in its Opposition, the Commission will not read it into the Act or Survival Statute. Berryman, 700 A.2d at 184. To follow the Housing Provider's interpretation of the statutory language would produce an absurd result in which otherwise meritorious claims properly initiated before administrative agencies would be dismissed solely because of the procedural difference from other remedial statutes that must be litigated in court. *See* Mitchell, 61 A.3d at 684 & n.11 ("there are any number of other contexts in which administrative agencies finally resolve disputes unless and until their final rulings are appealed to and overturned by this court").

Therefore, the Commission determines that the Motion for Substitution shall be granted, and the Personal Representative shall be substituted as a party for the Tenant. Attorney Borbely's Motion to Withdraw as counsel for the Tenant, which was previously held in abeyance, is also granted.

SO ORDERED.



DIANA HARRIS EPPS, COMMISSIONER

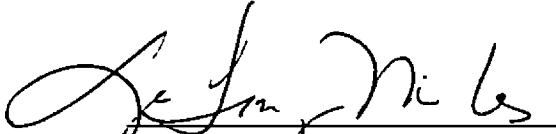
¹² The Commission additionally notes, as the Personal Representative asserts in the Reply, an administrative claim under the Act affects the public interest in stabilized rents and the proper enforcement of the Act by determining the basis for lawful rents that may be charged to future tenants. Reply at 1-2.

CERTIFICATE OF SERVICE

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

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A handwritten signature in black ink, appearing to read "LaTonya Miles", written over a horizontal line.

LaTonya Miles
Clerk of the Court
(202) 442-8949