

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

2013-DHCD-TP 30,431

In re: 3114 Wisconsin Ave., NW, Unit 203

Ward Three (3)

KAHLILL PALMER

Tenant/Appellant

v.

JOAN CLAY

Housing Provider /Appellee

ORDER ON MOTION TO COMPEL

January 29, 2015

McKOIN, COMMISSIONER. This case is on appeal from the District of Columbia Office of Administrative Hearings (OAH), based on a petition filed in the Rental Accommodations Division (RAD) 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, 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.

I. PROCEDURAL HISTORY

Kahlill Palmer (Tenant), residing in Unit 203 at 3114 Wisconsin Ave., N.W. (Housing Accommodation), filed, *pro se*, Tenant Petition 2013-DHCD-TP 30,431 (Tenant Petition) on

¹ OAH assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversion Division (RACD) on October 1, 2006, pursuant to § 6(b-1)(1) of the OAH Establishment Act, D.C. Law 16-83, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2012 Repl.). The functions and duties of RACD were transferred to 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 (2012 Repl.).

October 1, 2013, against Joan Clay (Housing Provider). An evidentiary hearing was held on May 6, 2014. Hearing for Rental Housing Attendance Sheet; R. at 78; Hearing CD (OAH May 6, 2014). On November 7, 2014, Administrative Law Judge Erika Pierson (ALJ) issued a final order in this case: Palmer v. Clay, 2013-DHCD-TP 30,431 (OAH Nov. 7, 2014) (Final Order); R. at 80-100. In the Final Order, the ALJ awarded the Tenant \$8,950.00 for rent overcharges between October 1, 2010, and October 1, 2013 (the date on which the Tenant Petition was filed), plus \$481.47 in interest (computed through the date of the Final Order), and rolled back the Tenant's rent to \$1,225.00 per month, the amount of the Tenant's rent prior to a December 1, 2010, rent increase. Final Order at 13-15; R. at 86-88. The Tenant filed a Motion for Reconsideration of the Final Order on November 21, 2014. Motion for Reconsideration at 1-20; R. at 101-21. The ALJ denied the motion on November 25, 2014. Order Denying Reconsideration at 1-3; R. at 122-25. On December 8, 2014, the Tenant filed a timely notice of appeal (Notice of Appeal). *See* 14 DCMR § 3802.2; Notice of Appeal at 1-21.

On December 19, 2014, the Tenant filed the instant motion with the Commission, styled "Motion to Compel Housing Provider to Comply with the Provisions of the Decision of the Hearing Examiner or to Refer to Rent Administrator for Non-Compliance" (Motion to Compel). In the Motion to Compel, the Tenant asks that the Commission compel the Housing Provider to comply with the Final Order by paying to the Tenant \$2,080.00 for rent overcharges between November 2013 and November 2014 (the time between the filing of the Tenant Petition and the issuance of the Final Order) or to refer the matter to the Rent Administrator for non-compliance. *See* Motion to Compel at 4.²

² In the Motion to Compel, the Tenant consistently uses the term "Hearing Examiner" in reference to the ALJ. *See generally* Motion to Compel. The Tenant's confusion is understandable because the Commission's rules do not Palmer v. Clay
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II. DISCUSSION

The powers and duties of the Commission are established by the Act. *See* D.C. OFFICIAL CODE § 42-3502.02.³ The Act does not provide the Commission or the Rent Administrator with the authority to directly compel compliance with an order of the Office of Administrative Hearings; such power is reserved to the Superior Court of the District of Columbia (Superior Court). D.C. OFFICIAL CODE § 42-3502.18 (2001) (“The [Commission], Rent Administrator, or any affected housing provider or tenant may commence a civil action in the [Superior Court] to

reflect the statutory changes that transferred jurisdiction over contested cases from the RACD to the Office of Administrative Hearings. *See supra* n. 1.

³ D.C. OFFICIAL CODE § 42-3502.02 provides, in relevant part:

- (a) The Rental Housing Commission shall:
 - (1) Issue, amend, and rescind rules and procedures for the administration of this chapter except rules and procedures subject to § 2-1831.05(a)(7);
 - (2) Decide appeals brought to it from decisions of the Rent Administrator, including appeals under the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, and the Rental Housing Act of 1980; and
 - (3) Certify and publish within 30 days after July 17, 1985, and prior to March 1 of each subsequent year the annual adjustment of general applicability in the rent charged of a rental unit under § 42-3502.06.
- (b)
 - (1) The Rental Housing Commission may hold hearings, sit and act at times and places within the District, administer oaths, and require by subpoena or otherwise the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents as the Rental Housing Commission may consider advisable in carrying out its functions under this chapter.
 - (2) A majority of the Rental Housing Commissioners shall constitute a quorum to do business, and any vacancy shall not impair the right of the remaining Rental Housing Commissioners to exercise all the powers of the Rental Housing Commission.
 - (3) In the case of contumacy or refusal to obey a subpoena issued under paragraph (1) of this subsection by any person who resides in, is found in, or transacts business within the District, the Superior Court of the District of Columbia, at the written request of the Rental Housing Commission, shall issue an order requiring the contumacious person to appear before the Rental Housing Commission, to produce evidence if so ordered, or to give testimony touching upon the matter under inquiry. Any failure of the person to obey any order of the Superior Court of the District of Columbia may be punished by that Court for contempt.

enforce any rule or decision issued under [the Act].”); *see Strand v. Frenkel*, 500 A.2d 1368, 1373 n.9 (D.C. 1985) (under substantially identical language of the Rental Housing Act of 1980, D.C. CODE § 45-1529 (1981), the Commission “has no authority to enforce its decisions; if enforcement is necessary, the RHC (or other interested parties) must go to court”); *Hanson v. D.C. Rental Hous. Comm’n*, 584 A.2d 592, 595 (D.C. 1991) (“If Commission actions cannot be judicially enforced, then it would seem to follow logically that RACD decisions of the hearing examiner also cannot be enforced until appellate review has been exhausted.”).

As noted by the Tenant in the Motion to Compel, the Commission’s rule at 14 DCMR § 3805.5 provides that:

All parties to an appeal are required to comply with the decision or order appealed from, except when the parties meet the requirements of §§ 3802.10 and 3802.11, or except when a stay has been granted by the Commission pursuant to § 3805.1.⁴

See Motion to Compel at 3. However, in *Strand*, the District of Columbia Court of Appeals (DCCA) held that an administrative decision under the Act cannot be enforced in the Superior Court until “after *final* agency action and (if requested) appellate court review.” *Strand*, 500 A.2d at 1373 (emphasis added); *see also Wash. Fed. Savings and Loan Ass’n v. Whiteside*, 488 A.2d 936 (D.C. 1985) (when Rent Administrator or Commission has primary jurisdiction over a matter, Superior Court action to enforce rights must be held in abeyance until administrative remedies and judicial review are exhausted); *Drayton v. Poretsky Mgmt., Inc.*, 462 A.2d 1115, 1120 (D.C. 1983) (“the doctrine of primary jurisdiction requires that . . . the [Superior Court]

⁴ The Commission’s rule at 14 DCMR § 3802.10 provides that “[a]ny party appealing a decision from the Rent Administrator [or OAH] which orders the payment of money may stay the enforcement of such decision by establishing an escrow account or purchasing a supersedeas bond which complies with the requirements of § 3806 within five (5) days of filing the notice of appeal.” 14 DCMR § 3802.11 describes how the escrow account or supersedeas bond should be established. 14 DCMR § 3805.1 provides for a party appealing a decision of an ALJ to file a motion to request a stay of the decision for awards other than the payment of money.

Judge should stay the action [for nonpayment of rent] to await the ruling of the [Rent] Administrator or, if an appeal is taken to the [Commission], then of that body.”).

Following the DCCA’s decisions in Strand and Whiteside, the Commission concluded that those cases:

... invalidate the premise upon which the ... regulations requiring stays pending appeal are based, i.e., the premise of enforceability, pending appeal, of orders for the payment of money. It is unnecessary to have regulations concerning the necessity of – or procedures for – seeking a stay in enforcement of a decision which is already stayed by operation of law.

Hanson v. Freeman, TP 11,949 (RHC Feb. 11, 1987). The DCCA affirmed the Commission’s determination that these rules have no legal effect. Hanson, 584 A.2d at 595 (“Since the regulations were inconsistent with the doctrine of primary jurisdiction, the Commission was not bound to follow them.”).

In this pending case, the Tenant has filed a notice of appeal to challenge the amount of the rent refund awarded by the ALJ. *See generally* Notice of Appeal. The Tenant asserts in the Motion to Compel that the ALJ’s order of a rent rollback to \$1,225 per month, an amount which the Commission does not understand the Tenant to contest in the Notice of Appeal, should, in essence, be applied retroactively to the date on which the Tenant Petition was filed. *See* Motion to Compel at 3. Consequently, the Tenant argues, the amount that he overpaid between the filing of the Tenant Petition and the issuance of the Final Order (allegedly \$2,080.00), is owed to him as a rent refund. *See id.*

The Commission determines, based on the DCCA’s holdings in Strand, and Hanson, that the Act does not authorize the Commission to compel the Housing Provider to pay any amount of money that is subject to a pending appeal and accordingly is not a final decision. *See* D.C. OFFICIAL CODE § 42-3502.18; Strand, 500 A.2d at 1373 (under enforcement provision of the

Act, “‘decision’ means ‘final decision’”); Hanson, 584 A.2d at 595; Hanson, TP 11,949.

Because, by filing the Notice of Appeal, the Tenant has continued to contest and seek review of the merits of the ALJ’s decision concluding that a monetary award is owed to him, the Commission is satisfied that there is no final agency action upon which any payment of money may be determined at this time. *See* Notice of Appeal; D.C. OFFICIAL CODE § 42-3502.18; Strand, 500 A.2d at 1373; Hanson, 584 A.2d at 595.

III. CONCLUSION

For the foregoing reasons, the Commission denies the Motion to Compel.

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:

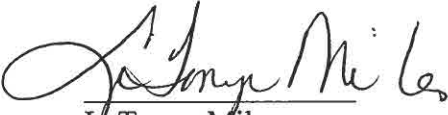
D.C. Court of Appeals
Office of the Clerk
430 E. Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER ON MOTION TO COMPEL** in 2013-DHCD-TP 30,431 was mailed, postage prepaid, by first class U.S. mail on this **29th day of January, 2015**, to:

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