DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

2013-DHCD-TP-30,472

In re: 1819 Q Street, SE, Apt. 1

Ward Eight (8)

KEITH CRAWFORD
Housing Provider/Appellant

v.

LINDA V. DYE
Tenant/Appellee

ORDER GRANTING MOTION TO WITHDRAW APPEAL

September 25, 2015

MCKOIN, COMMISSIONER. This case is on appeal to the Rental Housing Commission (Commission) from the 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.

[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.).

I. PROCEDURAL HISTORY

On January 23, 2014, Tenant Linda Dye residing at 1819 Q Street, SE, Apt. 1, (Housing Accommodation) filed Tenant Petition 2014-DHCD-TP-30,472 (Tenant Petition) alleging the following violations of the Rental Housing Act of 1985 (Rental Housing Act or the Act): (1) there was no proper 30-day notice of rent increase; and (2) Tenant's rent was increased while my/our rental unit was not in substantial compliance with the D.C. Housing Regulations.

On February 24, 2014, an order was issued scheduling the case for mediation on April *25,* 2014. On April 23, 2014, the Housing Provider filed a Motion to Cancel Mediation Session because he had made repairs in the apartment and the Tenant was satisfied. The Tenant appeared for mediation on April 25, 2014, Housing Provider did not. On September 16, 2014, the ALJ issued a Case Management Order scheduling a hearing for November 12, 2014. The Order informed Housing Provider that only the Tenant could withdraw the Tenant Petition and that if he failed to appear for the hearing, he might lose his case. The Tenant appeared for the hearing and testified. The Housing Provider failed to appear. The ALJ issued the Final Order on March 13, 2014. Dye v. Crawford, 2014-DHCD-TP-30,472 (OAH March 13, 2015).

The ALJ made the following findings of fact:[2]

1. On September 16, 2014, a Case Management Order (CMO) was mailed to Housing Provider scheduling a hearing for April 25, 2014, at 9:30 a.m.[3] The CMO was mailed to Housing Provider at the address provided in the petition and the address that appears on Tenant's lease. The CMO was not returned by the postal authorities as undeliverable. Housing Provider did not appear for the hearing or request a continuance.

[2] The findings of fact are stated as presented by the ALJ in the Final Order in Dye v. Crawford, 2014 DHCD-TP 30,472 (OAH March 13, 2015).

[3] The Commission notes that on February 24, 2014, the ALJ issued an Order Scheduling Mediation for April 25, 2014. The CMO was issued September 16, 2014. *See*, R. at 24-28 and R. at 32-38, respectively.

2. Tenant has resided in apartment 1 at 1819 Q Street, SE (Housing Accommodation) for 15 years. The Housing Accommodation is owned by Keith Crawford.

3. Throughout her 15 year tenancy, Tenant has paid rent of $500 per month and has never had a lease until this year. In a letter dated December 13, 2013, Keith Crawford informed Tenant that "This letter is to inform you that the lease agreement for tenancy at 1819 Q street SE, Apt [sic] 1, based on the terms by your previous landlord, Steve Madeoy, will end on January 14, 2014."

4. In February 2014, Housing Provider verbally informed tenant that her rent was increased from $500 to $750 per month effective that month. Tenant was not given any written notice of rent increase.

5. At the time Tenant's rent was increased she had the following problems in her apartment, which she requested that Housing Provider repair:

   a. A living room window was broken from a bullet being shot from outside.
   b. The bathtub and bathroom sink needed re-glazing.
   c. The dining room floor needed to be re-tiled.
   d. A closet door had broken hinges.

6. Housing Provider made repairs in April 2014. However, shortly after the repairs were made, the bathtub and sink began to peel again. Tenant's apartment was subsequently inspected by the District of Columbia Department of Consumer and Regulatory Affairs (DCRA). DCRA arranged for Tenant to receive a new sink and sent someone to properly reglaze [sic] her bathtub. DCRA told Tenant it would bill Housing Provider for the repairs.

The ALJ made the following conclusions of law:[4]

A. Housing Provider's Failure to Appear

1. Housing Provider in this case failed to appear for the OAH hearing. The signed certificate of service accompanying the Case Management Order states that the Clerk mailed the Order to Housing Provider on September 16, 2014. A certificate of service may ordinarily be relied on "to establish the date and fact of mailing." *Chatterjee v. Mid Atlantic Reg. Council of Carpenters,* 946 A.2d 352, 355 (D.C. 2008); *D.C. Pub. Employee Relations Bd. v. D.C. Metro. Police Dep't,* 593 A.2d 641, 643 (D.C. 1991), *citing Thomas v. D.C. Dep't of Employment Servs.,* 490 A.2d 1162, 1164 (D.C. 1985). The address to which the CMO was mailed is the same address that appears in case file. The CMO was not returned by the postal authorities as undeliverable.

[4] The conclusions of law are stated as presented by the ALJ in the Final Order in Dye v. Crawford, 2014 DHCD-TP 30,472 (OAH March 13, 2015) but have been numbered for easy reference.

2. The Act provides that "notice of the time and place of the hearing shall be furnished to the parties by first-class mail at least 15 days before commencement of the hearing." D.C. Official Code § 42-3502.16(c) (2010); *Saunders v. New Parkchester Housing Coop., Inc.,* RH-TP-10-29,910 (RHC June 29, 2012) at 7. The CMO, having been mailed on September 16, 2014, notifying the parties to appear for a hearing on April 25, 2014, meets this requirement. There is a rebuttable presumption that mail which has been correctly, addressed, stamped and mailed has been received the by the [sic] addressee. *McDaniels v. Brown,* 740 A.2d 551 (D.C. 1999); *Green v. Eva Realty, LLC,* TP 29,118 (RHC Sep. 4, 2009) at 3. The CMO included instructions for how to request a continuance and warned the parties, in bold print, that "If you do not appear for the hearing, you may lose the case." Because Housing Provider received proper notice of the hearing date, it was appropriate to go forward in its [sic] absence. *Dusenbery v. United States,* 534 U.S. 161, 167-71(2002); *Mennonite Board of Missions v. Adams,* 462 U.S. 791, 800 (1983); *McCaskill v. D.C. Dept. of Employment Serv's.,* 572 A.2d 443, 445 (D.C. 1990); *Carroll v. D.C. Dept* [sic] *of Employment Serv's.,* 487 A.2d 622, 624 (D.C. 1985); *Cf Borger Mgmt. v. Warren,* TP 23,909 (RHC Jun. 3, 1999) at 9-10 (affirming default judgment entered in favor of tenants where housing provider received notice of hearing but failed to attend). (emphasis omitted)

B. Tenant's Allegations

3. Tenant alleges in her petition that she did not receive a proper 30-day notice of rent increase and that when her rent was increased in February 2014, the Housing Accommodation was not in substantial compliance with the housing regulations.

4. In order to increase a tenant's rent, the Rental Housing Act (Act) requires a Housing Provider to: (a) provide the tenant with at least 30 days written notice; (b) certify that the unit and common elements are in substantial compliance with the housing regulations; (c) provide the tenant with a notice of rent adjustment filed with the RAD; (d) provide the tenant with a summary of tenant rights under the Act; and (e) simultaneously file with the R&D, a sample copy of the notice of rent adjustment along with an affidavit of service. D.C. Official Code § 42-3502.08(f); 14 DCMR 4205.4 [sic]. A rent adjustment is not deemed properly implemented unless the notice contains: (1) the amount of the adjustment; (2) the new rent; (3) the date upon which the adjusted rent shall be due; and (4) the date and authorization for the rent adjustment. 14 DCMR 4205.4 [sic].

5. In this case, Housing Provider did not provide Tenant with any written notice that her rent was increasing from $500 to $750. There was also no evidence that Housing Provider filed the increase with the Rental Accommodations Division as required.

Therefore, Tenant has met her burden of proving that she did not receive a proper 30-day notice of increase and the increase is invalid. D.C. Official Code § 42-3502.08(1); 14 DCMR 4205.4 [sic]. Therefore, Tenant is awarded a rent refund of $250 per month from February 2014 through November 2014, the date of the hearing. *Jenkins v. Johnson* TP 24, 410 (RHC Jan. 4, 1995). Tenant is awarded a total of $2,500 for the 10 months that Housing Provider either collected or demanded the increased rent. The rules implementing the Rental Housing Act provide for the award of interest on rent refunds calculated from the date of the violation to the date of the issuance of the Final Order. 14 DCMR 3826.2 [sic]. The interest rate imposed is the judgment interest rate used by the Superior Court of the District of Columbia on the date of issuance of the decision. *See* 14 DCMR 3826.3 [sic]; *Joseph v. Heidary,* TP-27,136 (RHC July 29, 2003); *Marshall v. D.C. Rental Hous. Comm 'n,* 533 A.2d 1271, 1278 (D.C. 1987). The Superior Court interest rate is currently 2% per annum. As such, Housing Provider must also pay Tenant $37.91 in interest as calculated in Appendix A (emphasis omitted; Appendix A omitted).

6. Because the rent increase was invalid, Tenant's rent is also rolled back to $500 per month until Housing Provider takes a proper rent increase. The Act provides for a rent roll back when a housing provider demands or receives rent in excess of the maximum allowable rent. D.C. Official Code § 42-3509.01(a); § 42-3502.08(a)(2); 14 DCMR 4205.6 [sic]; *Redmond v. Marjele Mgmt., Inc.,* TP-23,146 (RHC March 26, 2002) at 48.

7. Tenant also alleged that the Housing Accommodation was not in substantial compliance with the housing regulations when the rent was increased in February 2014. Tenant identified four problems that existed in her apartment when the rent was increased: a broken living room window, the bathtub and sink needed reglazing [sic], the dining room floor needed to be retiled [sic], and a closet door had broken hinges. Tenant did not provide sufficient information to determine whether these problems amounted to housing code violations such that the housing accommodation was not in *substantial* compliance with the housing regulations. However, as the rent increase was invalidated on other grounds, there would be no additional remedy available for tenant if I found that substantial housing code violations existed when the rent was increased.

The Housing Provider filed a Motion for Reconsideration on March 27, 2015, which the ALJ denied in a Statement of Reason to Deny Motion for Reconsideration on July 7, 2015. The Housing Provider filed a timely Notice of Appeal on May 21, 2015. The Commission scheduled an evidentiary hearing for August 25, 2015. At the hearing the parties were offered the opportunity for mediation of their issues which both parties consented to. The parties signed a Settlement

Agreement on August 25, 2015. On September 22, 2015, Housing Provider/Appellant filed a Motion to Withdraw with prejudice and Tenant/Appellee filed a Notice of Release.

II. DISCUSSION

In Proctor v. District of Columbia Rental Hous. Comm'n, 484 A.2d 542 (D.C. 1984), the District of Columbia Court of Appeals (DCCA) held that the Rental Housing Commission must consider any settlement agreement which the parties before the Commission enter in an attempt to resolve a dispute under the Act. The Commission's regulation 14 DCMR § 3824, provides the following with regards to the withdrawal of an appeal before the Commission:

> 3824.1 An appellant may file a motion to withdraw an appeal pending before the Commission.
>
> 3824.2 The Commission shall review all motions to withdraw to ensure that the interests of all parties are protected.

14 DCMR § 3824. *See*, Blackwell v. Dudley Pro Realty, LLC, RH-TP-07-29,075 (RHC May 2008) (finding motion for withdrawal of appeal was in the interest of all parties where all parties agreed to the dismissal of the appeal); Assalaam v. Schauer, TP 27,915 (RHC July 12, 2004) (granting motion to withdraw appeal were parties' settlement agreement demonstrated that the interests of all parties were protected by "providing for repairs in the Tenant's rental unit and the disbursement of the funds in the registry of the court to both parties"). The Commission has consistently stated that settlement of litigation is to be encouraged. *See*, KMG Mgmt., LLC, v. Richardson, RH-TP-12-30,230; Hernandez v. Gleason, TP 27,567 (RHC March 26, 2004); Bartelle v. Washington Apts., TP 27,617 (RI-CI Jan 26, 2004); Kellogg v. Dolan, TP 27,550 (RHC Feb. 20, 2003).

In Proctor, 484 A.2d 542 (D.C. 1984), the DCCA established the following five (5) factors for the Commission to use in evaluating settlement agreements:

1. The extent to which the settlement enjoys support among affected tenants;
2. Its potential for finally resolving the dispute;
3. The fairness of the proposal to all affected persons;
4. The saving of litigation costs to the parties; and
5. The difficulty of arriving at a prompt, final evaluation of the merits, given the complexity of law and the delays inherent in the administrative and judicial processes.

The Commission's review of the Settlement Agreement in this case indicates the following:

1. The Motion to Withdraw was agreed to by both parties, with a Notice of Release signed by the Tenant in acceptance of the abatement offered by the Housing Provider.

2. The Settlement Agreement fully resolves the dispute in this appeal with an adjustment in the Tenant's rent and a release of the Tenant's claims against the Housing Provider.

3. The Settlement Agreement is fair to all parties because it results in an agreement as to the appropriate amount of the Tenant's rent and the release of the claims against the Housing Provider as to the rental unit.

4. Both parties saved the cost of litigation of further pursuing their claims.

5. By reaching a settlement the parties have avoided the difficulties and delays inherent in the administrative and judicial processes by arriving at a prompt, fair and complete adjudication of the merits of each party's claims.

The Commission has found no evidence in the record to indicate that the Settlement Agreement was not knowingly and voluntarily negotiated in good faith.

Based on the foregoing the Commission determines that the interests of all the parties are protected by the filing of the Motion to Withdraw.

III. CONCLUSION

For the foregoing reasons the Commission determines that the interests of each party in this appeal are protected by the Settlement Agreement, and that the withdrawal of the appeal by mutual consent of the parties is consistent with the purposes of and provisions of the Act. The Commission, therefore, grants the Housing Provider's Motion to Withdraw the Notice of Appeal and dismisses the Notice with prejudice.

SO ORDERED

Claudia L. McKoin

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 **DECISION AND ORDER** in RH-TP-14-30,472 was mailed, postage prepaid, by first class U.S. mail on this **25th day** of **September, 2015,** to:

Keith Crawford
100 Seaton Place, NW
Washington, DC 20001

Linda V. Dye
1819 Q Street, SE
Washington, DC 20020

LaTonya Miles
Clerk of Court