

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

RH-TP-14-30,571

*In re:* 1635 Holbrook Street, N.E.

Ward (1)

**HOLBROOK STREET, LLC**  
Housing Provider/Appellant

v.

**SYLVIA R. SEEGER**  
Tenant/Appellee

**ORDER ON MOTION TO ESTABLISH AN ESCROW ACCOUNT OR POST  
SUPERSEDEAS BOND**

May 20, 2016

**McKOIN, COMMISSIONER.** This case is on appeal to the Rental Housing Commission from a Final Order of 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).<sup>1</sup> 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 (2001), 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.

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<sup>1</sup> OAH assumed jurisdiction over tenant petitions from the Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion Division (RACD) pursuant to the Office of Administrative Hearings Establishment Act, DC. Law 14-76, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2007 Repl.). The functions and duties of RACD in DCRA were transferred to DHCD effective October 1, 2007, by the Rental Housing Operations Transfer Amendment Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2010 Repl.).

## I. PROCEDURAL HISTORY

On August 27, 2014, Sylvia R. Seegers (Tenant) filed a tenant petition against Holbrook Street, LLC (Housing Provider) challenging the Housing Provider's September 2014, increase of her rent from \$450 to \$1,100. The Tenant alleged in her petition that the Housing Accommodation, 1635 Holbrook St., N.E., was not properly registered, that her rent was increased in an amount higher than what was allowed by the Rental Housing Act and that her rent was increased while the rental unit was not in substantial compliance with the housing regulations. Tenant Petition, R. at 1-14.

On September 22, 2015, OAH issued a Final Order, Sylvia R. Seegers v. Holbrook Street, LLC, 2014 DHCD TP 30,571 (OAH September 22, 2015) (Final Order) finding for the Tenant and ordering the Housing Provider to pay her \$8552.40, within 30 days of service of the final order, for the rent demanded above the legal rent of \$450. The order also rolled back the Tenant's rent to \$450 per month. The Housing Provider filed a Notice of Appeal of the OAH order with the Commission on October 2, 2015.

During the pendency of the tenant petition before OAH the Housing Provider filed, on June 5, 2015, an eviction action against the Tenant for alleged failure to pay rent in the Landlord and Tenant Branch of the Superior Court of the District of Columbia. The Tenant filed an Answer, Counterclaim, Recoupment and Set-Off in the eviction case. The Tenant denied that she owed the amount alleged by the Housing Provider claiming that the suit was filed in retaliation for filing her tenant petition and for making an affirmative claim for money because of the her unit's substantial noncompliance with the District's housing regulations. Tenant's Motion, at 2.

On August 5, 2015, the Tenant filed a small claims action against the Housing Provider for property damage that she incurred as a result of a persistent rodent infestation. In September 2015, the small claims case and the eviction case were consolidated. The Tenant agreed to pay a protective order of \$450 into the Court until the eviction case was resolved. Tenant's Motion, at 2-3. The parties have engaged in settlement discussions to settle these disputes.

On April 28, 2016, the Tenant filed, Appellee Sylvia Seegers' Motion for an Order Requiring Appellant Holbrook Street, LLC to Establish an Escrow Account or Post a Supersedeas Bond (Motion), requesting that the Commission issue an order requiring the Housing Provider to establish an escrow account or post a supersedeas bond.

## **II. PRELIMINARLY ISSUE**

The Housing Provider's Opposition to Appellee's Motion for an Order to Establish an Escrow Account or Post a Bond was filed on May 11, 2016. According to 14 DCMR 3814.3 "Any party may file a response in opposition to a motion within five (5) days after service of the motion." The Tenant's motion to establish an escrow account was filed on April 28, 2016. Allowing three (3) days for mailing, along with the five (5) days provided for in 14 DCMR 3814.3, the Housing Provider's Opposition to Appellee's Motion for an Order to Establish an Escrow Account or Post a Bond should have been filed on May 10, 2016. Because the Housing Provider's motion was filed beyond the time allowed by the regulations it will not be considered in regards to this order.

## **III. DISCUSSION**

The Commission's regulations related to the establishment of an escrow account or supersedeas bond provide as follows:

Any party appealing a decision of the Rent Administrator 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 § 3802.10

The payment of money described in § 3802.10 shall include the award of rent increases to a housing provider. Establishment of an escrow account or the purchase of a supersedeas bond pursuant to § 3802.10 shall be based on at least six (6) months of the rent increase per party appealing; provided, that the escrow account may be paid in monthly deposits during the pendency of the appeal and the appellee shall be notified of the deposits.

14 DCMR §3802.11

In this case the Tenant has not asked for a stay<sup>2</sup> of the OAH decision only the establishment of an escrow account or supersedeas bond because of her concern that the judgement will not be paid. The Tenant states that the Housing Provider may refuse to honor the OAH order even if it is affirmed by the Commission and that possibility has made settlement difficult for her. The Tenant also cites the following reasons for her concern about the payment of the \$8552.40 award:

1. Failure of the Housing Provider, to offer the Tenant any assurances that payment will be made of the award should the Commission affirm the Final Order.
2. Failure to provide the Tenant's legal counsel with any argument for reversing the Final Order which is not completely foreclosed by the District of Columbia Court of Appeals (DCCA).

Tenant's Motion, at 3.

The Tenant states that it appears that the Housing Provider filed the appeal in order to delay the payment of the award and for leverage in the other matters pending between the parties. The Tenant believes that an order by the Commission requiring the establishment of an escrow account or supersedeas bond by the Housing Provider would assure payment of the award if the Commission affirms the OAH order.

Tenant's Motion, at 3.

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<sup>2</sup> The Commission notes that the Appellant Housing Provider has not filed a motion for a stay of the OAH Final Order.

The case history on the issue of stays is found in Strand v. Frenkel, 500 A.2d 1368 (D.C. App. 1985) and Hanson v. Freeman, TP 11,949 (RHC February 11, 1987). In Strand the court addressed whether a decision by an administrative body is final for enforcement purposes unless stayed or whether an administrative decision does not become final for enforcement until completion of the judicial review process. (Hanson, TP 11,949, at 9, 10) (citing Strand, 500 A.2d, at 1373). The Strand decision relied on the doctrine of primary jurisdiction and cited to Washington Fed. Sav. and Loan Ass'n v. Whiteside, 488 A.2d 936 (D.C. App. 1985). In Strand the court held that “a Superior Court action to enforce rights [established by a decision of the Rent Administrator] must be held in abeyance until both the administrative remedies (through final RHC action) and the right of judicial review have been exhausted. . . . “In effect, therefore, Whiteside deems all RHC decisions stayed, for finality purposes, pending judicial review. It follows that no § 45-1529 (now D.C. Official Code § 42-3502.18) enforcement right accrues . . . until judicial review rights have been exhausted.” (Hanson, TP 11,949, at 10) (citing Strand, 500 A.2d, at 1374).

The Strand, Hanson and Whiteside decisions made clear that decisions from the Rent Administrator or OAH are automatically stayed upon appeal to the Commission. These decisions, however, do not speak to the Commission’s authority to order the establishment of escrow accounts or supersedeas bonds. In the Hanson decision the court stated:

Under Strand and Whiteside holdings, judicial enforcement of a Rent Administrator’s decision on appeal is stayed regardless of the existence vel non of a bond or escrow account, both of which are irrelevant to the stay issue. These protective devices, designed to assure eventual satisfaction of monetary award, cannot be required as a condition of staying an already stayed decision.

Hanson, TP 11,949, at 11.

As stated in Hanson above, an order requiring the establishment of an escrow account or a supersedeas bond is separate and apart from imposing a stay. Therefore, there is no restriction on the Commission in considering or issuing an order to establish an escrow account or a supersedeas bond. In fact the District of Columbia Court of Appeals has found:

We submit that the Commission, a quasi-judicial agency, has “implicit” “discretionary power,” to enforce its protective order, which are of “an administrative type akin to a court protective order.”

Mullin v. N Street Follies Ltd. P’ship, 712 A.2d 487,493 (D.C. 1998)

In its Notice of Appeal the Housing Provider raised issues challenging the decision of the ALJ that the Housing Accommodation was not currently exempt from rent stabilization, that there was no evidence of housing code violations at the time of the rent increase and the award of a rent refund was erroneous because Tenant did not pay the rent. Housing Provider’s Notice of Appeal, at 1, 2. The filing of the Notice of Appeal along with the ongoing judicial proceedings appears to give rise to the Tenant’s concern of future payment of the award. The Final Order notes in the Finding of Facts that the Housing Provider purchased the Housing Accommodation that is the subject of this case and three other properties on Holbrook Street in December of 2013. Final Order, at 2. This fact might indicate that the Housing Provider has the ability to pay the reward. However, the concern the Tenant seems to express is not the inability to pay but the unwillingness to pay the award.<sup>3</sup>

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<sup>3</sup> The Tenant in her motion cites to Grand Union Co. v. Food Employers Labor Relations, 637 F. Supp. 356, 357 (D.D.C. 1986) (citing Fed. Prescription Services v. Am. Pharm. Ass’n, 637 F. Supp. 356, 357), which states: “Because the stay operates for the appellant’s benefit and deprives the appellee of the immediate benefit of his judgment, a full supersedeas bond should be the requirement in normal circumstances, *such as where there is some reasonable likelihood of the judgement debtor’s inability or unwillingness to satisfy the judgment in full upon ultimate disposition of the case and where posting adequate security is practicable.* (emphasis added)

Based on the Findings of Fact and Conclusions of Law in the Final Order there is some likelihood that the Tenant could prevail in the appeal. There is the possibility of harm to the Tenant if the Housing Provider is unwilling to pay the award if the Commission upholds the ALJ's decision. The injury to the Housing Provider would be to have the \$8,552.40, unavailable to him for other purposes. However, in considering the injury to either party it would appear that the greater harm may occur to the Tenant if she does not receive payment of the award. The Tenant's monthly rent was increased from \$450 to \$1100, a 110% increase, in September 2014. This is a significant increase which may put the Tenant at a significant financial disadvantage.

For the reasons stated above the Commission grants the motion to establish an escrow account. The Housing Provider shall establish the escrow account within ten (10) days of the issuance of this order. In establishing the escrow account the Housing Provider shall comply with the following requirements:

- 3806.1 Whenever the Commission orders, or these rules require, that an escrow account be established by a party, the conditions set forth in this section shall apply.
- 3806.2 The amount of money specified in the order shall be placed in a bank or other financial institution within the District of Columbia.
- 3806.3 The deposit shall be placed in an account that pays the prevailing rate of interest.
- 3806.4 The sum deposited shall be placed in escrow and outside of the control of the party depositor.
- 3806.5 The escrow agent shall be unable to release the sum deposited in any way other than as ordered by the Commission.
- 3806.6 The party establishing the escrow account shall file a copy of the escrow agreement with the Commission and the opposing party.

- 3806.7 The escrow account shall be established within the time period specified by the Commission.
- 3806.8 Any party ordered to or required under this section to establish an escrow account may in lieu thereof purchase a supersedeas bond that complies with the provisions of this section.

14 DCMR § 3806

**SO ORDERED**

A handwritten signature in cursive script, reading "Claudia L. McKoin".

CLAUDIA L. McKOIN, COMMISSIONER

**CERTIFICATE OF SERVICE**

I certify that a copy of the **Order on Motion to Establish an Escrow Account or Post Supersedeas Bond** in RH-TP-14-30,571 was served by first-class, postage prepaid, this **20<sup>th</sup> day of May, 2016**, to:

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