

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-14-30,604

In re: 39 P Street, SW, #10

Ward Six (6)

GLENN A. DAVIS
Tenant/Appellant

v.

TEL-COURT COOPERATIVE, INC.
Housing Provider/Appellee

FINAL DECISION AND ORDER

February 18, 2016

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from a final order issued by 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 (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.

¹ 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, D.C. 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 by § 2003 the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2010 Repl.).

I. PROCEDURAL HISTORY

On November 28, 2014, Tenant/Appellant Glenn Davis (Mr. Davis) filed Tenant Petition RH-TP-14-30,604 (Tenant Petition) with RAD, against Tel-Court Cooperative Inc. (Housing Provider), regarding the housing accommodation located at 39 P Street, S.W., Unit #10 (Housing Accommodation). See Tenant Petition at 1-2; Record for RH-TP-14-30,604 (R.) at 21-22.

On January 6, 2015, the Housing Provider filed a motion to dismiss the Tenant Petition (Motion to Dismiss), asserting that the Housing Accommodation is exempt from the rent stabilization provisions of the Act because it is federally subsidized. Motion to Dismiss at 1; R. at 34. A hearing was held on the Motion to Dismiss on February 12, 2015.

The ALJ issued a final order on April 23, 2015: Glenn A. Davis v. Tel-Court Cooperative, Inc., RH-TP-14-30,604 (OAH Apr. 23, 2015) (Final Order); R. at 47-57. The ALJ made the following findings of fact in the Final Order:²

The procedural history of this case is clearly set forth in the Superior court orders which found as follows:

1. The "Housing Accommodation" in question is located at 39 P Street, NW [sic], unit 10. The property was occupied by Mr. Davis's mother Irene Davis until her death in 2011. Glenn Davis is the Co-Personal Representative of his mother's estate, along with his sister Ms. Anderson. Mr. Davis resides in Ohio and does not live at the Housing Accommodation.
2. The Housing Accommodation is a low income cooperative that is owned by Tel-Court Cooperative, Association, Inc.
3. In the Probate case, filed on November 2, 2011, Mr. Davis alleged that his mother was the sole owner of Tel-Court Cooperative and that her estate has an interest in the property. Mr. Davis and Ms. Anderson were appointed Co-Personal Representatives on November 9, 2011. The Probate Court painstakingly analyzed the cooperative by-laws and purchasing documents. The probate case remains pending, but several interim orders have been issued deciding certain issues. *In Re: Estate of Irene Davis*, 2011-SEB-520. Based on the below findings, the Probate Court determined that the unit in question

² The findings of fact are recited herein using the language of the ALJ in the Final Order.

is a cooperative unit, that Irene Davis was a cooperative member, that the estate retained an interest in the unit, and that the value of that interest needed to be determined:

- a. In 1979, Irene Davis and her husband deeded their interest in the unit to Tel-Court for the sum of \$500, the initial subscription fee: "They were paid \$9,000 for their deed and afforded the opportunity to join the cooperative in exchange for the payment of a \$500 subscription fee. They paid the subscription fee and became members of the cooperative." *In Re: Estate of Irene Davis*, 2011-SEB-520, *Order*, March 1, 2013 at 4. The \$500 was part of initial subscription fees totaling \$13,000 used to secure a loan from Federal Savings and Loan Association. The prospectus for the cooperative reflects that the loan was to be paid from subscription fees of the members. *Id.*
 - b. Superior Court Judge Reid-Winston, found that at the time of Ms. Davis's death, her interest in the cooperative had not been terminated. Following the death of Irene Davis, her daughter (Ms. Anderson), acting as the mother's attorney in fact, gave Housing Provider a notice to vacate by April 30, 2011. However, the unit was never vacated and either Ms. Anderson or Mr. Davis continued to pay the cooperative carrying charges. In an order dated March 1, 2013, Judge Reid-Winston found that Housing Provider was estopped from relying on the notice to vacate as a basis for its claim that the Estate has no interest in the unit because Housing Provider had not at that time taken steps to enforce the notice to vacate when Ms. Anderson did not vacate by April 30, 2011. *Id.*
 - c. Judge Reid-Winston found that the terms of the Tel-Court by-laws permitted a member's membership in the cooperative to pass by will or intestate succession under certain circumstances. Mr. Davis provided Housing Provider with notice of his intent to assume the terms of the subscription and occupancy agreements and to become a cooperative member.
 - d. Housing Provider did not respond to Mr. Davis' inquiries to determine the outstanding balance due on the carrying charges, but informed Mr. Davis that he was not a cooperative member. Because Housing Provider did not comply with the by-law's requirements for transferring ownership upon the death of a member and withheld information from Mr. Davis, Judge Reid-Winston found that the estate retained an interest in the unit and determined the valuation method for the unit's worth.
4. On May 7, 2012, Housing Provider filed a complaint for possession of the rental unit in Superior Court for failure to pay carrying charges. *Tel-Court*

