

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

RH-TP-15-30,653

In re: 2727 M Street, NW

Ward Two (2)

**PATRICK C. NOVAK**  
Tenant/Appellant

v.

**NATALIA G. SEDOVA**  
Housing Provider/Appellee

**ORDER DISMISSING APPEAL**

November 20, 2015

**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 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, 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**

Tenant/Appellant Patrick Novak (Tenant), former resident of the housing accommodation located at 2727 M Street, NW, (Housing Accommodation), filed Tenant Petition RH-TP-15-30,653 (Tenant Petition) with RAD on April 1, 2015, against Housing Provider/Appellee Natalia Sedova (Housing Provider). Tenant Petition at 1-2; Record for RH-TP-15-30,653 (R.) at 37-38.

A hearing was held before Administrative Law Judge Erika Pierson (ALJ) on July 21, 2015, and a final order was issued on August 13, 2015: Novak v. Sedova, RH-TP-15-30,653 (OAH Aug. 13, 2015) (Final Order). R. at 122-34. In the Final Order, the ALJ determined that the Tenant had not met his burden of proving that the Housing Provider had unlawfully withheld his security deposit, and dismissed the Tenant Petition. Final Order at 10; R. at 125.

Under the OAH rules at 1 DCMR § 2841.1 (2011), OAH is permitted to serve orders on parties by e-mail. The Tenant specifically requested in the Tenant Petition that he be served with documents solely and exclusively by e-mail rather than by the customary United State (U.S.) mail. See Attachment to Tenant Petition at 1; R. at 34. OAH served the Final Order on the Tenant solely and exclusively by e-mail on August 13, 2015, the date of issuance of the Final Order by the ALJ. The e-mail address provided by the Tenant was: grand88@yahoo.com. Tenant Petition at 1; R. at 38.

On September 1, 2015, the Tenant filed an appeal with the Commission (Notice of Appeal).

## **II. PRELIMINARY ISSUE: TIMELINESS OF APPEAL**

In accordance with the Commission's regulations at 14 DCMR § 3802.2 (2004), a notice of appeal must be filed within ten days after a final decision is issued, plus three days if the ALJ

had “mailed” the final decision to the parties.<sup>2</sup> The ten days do not include intermediate weekends or holidays. 14 DCMR § 3816.3.<sup>3</sup>

In accordance with 14 DCMR §§ 3802.2 & 3816.3, the Tenant’s ten-day time period for filing a notice of appeal expired on August 27, 2015, five days before the Tenant’s actual and otherwise untimely filing of the notice of appeal with the Commission on September 1, 2015. *See* Final Order at 1, 13; R. at 122, 134. However, if three additional days were added in accordance with 14 DCMR § 3802.2 in the event that the ALJ were deemed to have “mailed” the final decision to the parties, the expiration date of the 10-day filing period for the Tenant’s notice of appeal would be September 1, 2015, thereby rendering the Tenant’s September 1, 2015 notice of appeal timely under 14 DCMR §§ 3802.2 & 3816.3.

The Commission’s review of the record reveals that the Certificate of Service attached to the Final Order indicates that the Final Order was e-mailed to the Tenant at his correct e-mail address of record: grand88@yahoo.com. Final Order at 13; R. at 122. Additionally, the record contains a printout of the e-mail from the OAH Clerk addressed to the Tenant at grand88@yahoo.com, and containing the Final Order as an attachment. *See* August 13, 2015 e-mail; R. at 121. The Tenant does not contend, nor does the record reveal evidentiary support for a determination, that the Tenant did not receive a copy of the Final Order on the date that it was e-mailed.

Initially, the Commission notes that, upon the specific request of the Tenant, OAH used email solely and exclusively to deliver the Final Order to the Tenant. Tenant Petition at 1; R. at

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<sup>2</sup> 14 DCMR § 3802.2 provides the following: “A notice of appeal shall be filed by the aggrieved party within ten (10) days after a final decision of the Rent Administrator [or ALJ] is issued; and, if the decision is served on the parties by mail, an additional three (3) days shall be allowed.”

<sup>3</sup> 14 DCMR § 3816.3 provides the following: “When the time period prescribed or allowed is ten (10) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.”

