

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

RH-TP-15-30,658

In re: 4100 East Capitol St., N.E.  
Unit D-44

Ward Seven (7)

**JEROME BETTIS**  
Tenant/Appellant

v.

**HORNING ASSOCIATES**  
Housing Provider/Appellee

**ORDER GRANTING CONTINUANCE**

November 4, 2016

**EPPS, COMMISSIONER.** This case is on appeal from the Office of Administrative Hearings (“OAH”) to the Rental Housing Commission (“Commission”) and is scheduled for a hearing on November 9, 2016. On October 31, 2016, tenant/appellant Jerome Bettis (“Tenant”) filed a motion to continue the hearing (“Motion for Continuance”), alleging a variety of misconduct by housing provider/appellee Horning Associates (“Housing Provider”) or its agents. On November 4, 2016, the Housing Provider filed a praecipe consenting to the Motion for Continuance.

The Commission’s rules on continuances of hearings and provide as follows:

3815.1 Any party may move to request a continuance of any scheduled hearing or for ex-tension of time to file a pleading, other than a notice of appeal, or leave to amend a pleading if the motion is served on opposing parties and the Commission at least five (5) days before the hearing or the due date; however, in the event of extraordinary circumstances, the time limit may be shortened by the Commission.

3815.2 Motions shall set forth good cause for the relief requested.

3815.3 Conflicting engagements of counsel, absence of counsel, or the employment of new counsel shall not be regarded as good cause for continuance unless set forth promptly after notice of the hearing has been given.

14 DCMR § 3815 (2004); *see, e.g., Siegel v. B.F. Saul Co.*, RH-TP-06-28,524 (RHC May 1, 2015) (finding good cause for a continuance where *pro se* tenant timely filed a motion for continuance, and had undergone surgery three weeks before the scheduled hearing); Prosper v. Pinnacle Mgmt., TP 27,783 (RHC Jan. 19, 2012) (determining that good cause for a continuance existed where tenant’s counsel was in the hospital at the time the Commission issued its notice of hearing, and counsel provided a memorandum from his physician confirming counsel’s medical condition).

The Commission observes that “administrative tribunals ‘must be, and are, given discretion in the procedural decisions made in carrying out their statutory mandate.’” Prime v. D.C. Dep’t of Pub. Works, 955 A.2d 178, 182 (D.C. 2008) (quoting Ammerman v. D.C. Rental Accommodations Comm’n, 375 A.2d 1060, 1063 (D.C. 1977)). Continuances are committed to the sound discretion of the Commission. Prime, 955 A.2d at 180; Ivancie v. Estate of Lewis H. Curd, RH-TP-07-28,989 (RHC Sept. 4, 2015); Siegel, RH-TP-06-28,524.

The Commission is not persuaded that the Tenant has set forth “good cause” for the continuance of the hearing. The Commission observes that the central reason for the Tenant’s request is that he believes the United States’ Attorney for the District of Columbia should prosecute the Housing Provider’s agent for perjury or filing a false police report. *See* Motion for Continuance at 2. Specifically, the Motion for Continuance is captioned as follows: “Motion for Continuance To Request the Intervention of The United States Attorney and/or Place Administrative Hearing Into Abeyance to Investigate the Obstruction of and Hindrance of Due Process By Death Threats and Other Egregious Actions Pre and Post Appeal to RTC.” Motion

for Continuance at 1 (sic throughout). The Tenant argues that the Commission's hearing on appeal should be delayed:

To allow and request the intervention of the United States Attorney General [sic] for the District of Columbia to review and investigate identifiable and documented adverse tactics employed by the Housing Provider . . . including (1) Anissa Eatmon stating under oath at the March 29, 2016 OAH hearing that an assault charge was filed against [Tenant], if and when this allegation is ever investigated, it shall be determined to be a false or fictitious report to MPD, which is a criminal charged that could be filed against this employee under [D.C. OFFICIAL CODE § 5-117.05] and (2) possibly facing other charges including that of Perjury under [D.C. OFFICIAL CODE § 22-2402].

Motion for Continuance at 2.<sup>1</sup> The Tenant also asserts that the Housing Provider or its agents have engaged in a number of acts since the summer of 2016, through October 27, 2016, which are “directly targeting the [Tenant] to force an illegal eviction and force [the Tenant] to cease and desist with [his] complaint[.]” *Id.* at 4.

The Commission, however, has no jurisdiction over the U.S. Attorney's Office or the District's criminal laws. The Commission exists pursuant to the Rental Housing Act of 1985 (“Act”), D.C. Law 6-10, D.C. OFFICIAL CODE § 42-3502.02. The Commission's jurisdiction is limited to the statute that creates it. *See District Intown Props. v. D.C. Dep't of Consumer & Regulatory Affairs*, 680 A.2d 1373, 1379 (D.C. 1996) (“An administrative agency is a creature of statute and may not act in excess of its statutory authority.”); *see e.g., 1829 Kalorama Rd. Tenant Ass'n v. Estate of William P. Fletcher*, RH-RP-15-00017 (RHC July 28, 2016) (Commission has no jurisdiction over Tenant Opportunity to Purchase Act of 1980). No provision of the Rental Housing Act relates to the criminal enforcement of the District's laws against perjury or false police reports, nor does the United States Attorney's Office for the District of Columbia play a role in the administrative procedures under the Act. Therefore, the

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<sup>1</sup> The Commission's review of the record shows that the majority of the Tenant's six-page, single-spaced Motion for Continuance is devoted to arguing and elaborating on the substance of his complaints against the Housing Provider.

Commission determines that the Tenant's desire to see the Housing Provider or its agent prosecuted does not constitute "good cause" for a continuance of the Commission's scheduled hearing. 14 DCMR § 3815.2.

Further, the role of the Commission in an appeal "is not to 'weigh the testimony and substitute ourselves for the trier of fact who heard the conflicting testimony, observed the adversary witnesses, and determined the weight to be accorded their testimony'" Washington Cmty. v. Joyner, TP 28,151 (RHC Jul. 22, 2008) at 15 (quoting Fort Chaplin Park Assocs. v. D.C. Rental Hous. Comm'n, 649 A.2d 1076, 1079 (D.C. 1994)). Rather, the Commission will only reverse decisions that are "based upon arbitrary action, capricious action, or an abuse of discretion, or which contain conclusions of law not in accordance with the provisions of the Act, or findings of fact unsupported by substantial evidence on the record of the proceedings" before OAH. 14 DCMR § 3807.1; *see* Fort Chaplin Park, 649 A.2d at 1079 n.9 (substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion"). The Commission is also prohibited from accepting new evidence on appeal that does not appear in the record from the OAH. 14 DCMR § 3807.5.

The Commission observes that the Tenant's assertion that the Housing Provider testified falsely is a credibility determination related to the merits of the Tenant's petition. *See* 14 DCMR § 3807.1; Joyner, TP 28,151. The Commission also observes that the Tenant's allegations of an ongoing course of unlawful conduct to evict the Tenant relates to matters arising after the close of the evidentiary record at OAH, which, while possibly in violation of the Act, is not before the Commission on this record. *See* 14 DCMR § 3807.5.

Moreover, the Commission's review of a case is limited to those issues that have been raised in a notice of appeal. 14 DCMR § 3807.4; *see, e.g.*, B.F. Saul Prop. Co. v. Nelson, TP

28,519 (RHC Feb. 18, 2016) (appellants could not “reserve the right” to brief additional errors not raised in notice of appeal). The Commission’s review of the Notice of Appeal does not reveal any issue raised by the Tenant relating to possible perjury or false police reports.

If the Tenant had raised those issues, it would nonetheless be unclear why a factual dispute related to the merits of his claims against the Housing Provider would constitute “good cause” for a delay in the Commission’s appellate hearing. *See Siegel*, RH-TP-06-28,524; *Prosper*, TP 27,783. As stated in the Notice of Scheduled Hearing and Notice of Certification of Record, which was issued by the Commission to both the Tenant and the Housing Provider, a hearing before the Commission consists of “a maximum of twenty (20) minutes for oral arguments” given to each party. Nothing in the Motion for Continuance indicates to the Commission why possible criminal prosecution of the Housing Provider’s agent or disputes over an ongoing tenancy would prevent the Tenant from appearing before the Commission as scheduled and presenting oral arguments on the legal issues of his case.

Nonetheless, the Commission is satisfied that the consent of the Housing Provider is sufficient reason to grant the Motion for Continuance. *See Ivancie*, RH-TP-07-28,989; *Johnson v. Dorchester House Assocs., LLC*, RH-TP-07-29,077 (RHC Oct. 28, 2008).

Therefore, the Commission grants the Motion for Continuance. In exercise of its discretion, the Commission will reschedule its hearing for **Wednesday, December 14, 2016, at 2:00 pm.**

**SO ORDERED.**



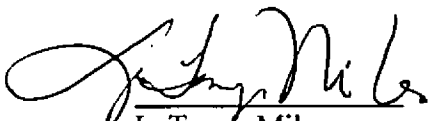
DIANA HARRIS EPPS, COMMISSIONER

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing **ORDER** in RH-TP-15-30,658 was mailed, postage prepaid, by first class U.S. mail on this **4th day of November, 2016**, to:

Jerome Bettis  
4100 East Capitol St., N.E.  
Washington, DC 20019

Timothy Cole, Esq.  
Susan S. Magazine, Esq.  
Cole, Goodson and Associates  
4350 East West Hwy., #1150  
Bethesda, MD 20814



LaTonya Miles  
Clerk of the Court  
(202) 442-8949