

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-16-30,800

In re: 953 Randolph Street, N.W.
Unit B

Ward Four (4)

**CRAIG PHILIP and
JUAN DELACRUZ**
Tenants/Appellants

v.

WILLOUGHBY REAL ESTATE COMPANY
Housing Provider/Appellee

ORDER DISMISSING APPEAL

August 30, 2016

EPPS, 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 These proceedings are governed by 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 (2012 Repl.), the District of Columbia Administrative Procedures Act (“DCAPA”), D.C. OFFICIAL CODE § 2-501 - 510 (2012 Repl.), and the District of Columbia Municipal Regulations (“DCMR”), 1 DCMR § 2800-2899, 14 DCMR §§ 3800-4399 (2004).

¹ OAH assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversion Division (“RACD”) of the Department of Consumer and Regulatory Affairs (“DCRA”) pursuant to the Office of Administrative Hearings Establishment Act of 2001, D.C. Law 14-76, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2012 Repl.). The functions and duties of RACD in DCRA were transferred to the RAD in DHCD by § 2003 of the Rental Housing Operations Transfer Amendment Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2012 Repl.).

I. PROCEDURAL HISTORY

On April 12, 2016, Craig Philip and Juan DeLaCruz (“Tenants”), former residents in unit B of the housing accommodation located at 953 Randolph Street, N.W. (“Housing Accommodation”), filed tenant petition TP 30,800 (“Tenant Petition”) with the RAD against Willoughby Real Estate Company (“Housing Provider”). *See Philip v. Willoughby Real Estate Co.*, 2016-DHCD-TP 30,800 (OAH Jul. 25, 2015) (“Final Order”) at 1.² A hearing in this matter was conducted on July 25, 2016, before the Honorable Administrative Law Judge Margaret A. Mangan (“ALJ”) at which the Housing Provider appeared but the Tenants did not. Final Order at 1-3. The ALJ issued the Final Order that same day dismissing the Tenant Petition with prejudice, finding that the Tenants had failed to appear at the hearing where they had the burden of proof. Final Order at 2-3.

The certificate of service for the Final Order states that, on July 26, 2016, the clerk of OAH, in conformity with 1 DCMR § 2937.1,³ served copies of the Final Order on the parties via first-class mail. Final Order at 5.⁴ On August 22, 2016, the Commission received the Tenants’ Notice of Appeal (“Notice of Appeal”). In the Notice of Appeal, the Tenants maintain that the ALJ erred in entering a default judgement against them because the Tenant allege they did not receive proper notice of the OAH hearing date. *See Notice of Appeal* at 1.

² Although the certified record of this proceeding has not yet been transmitted to the Commission by the OAH, the Commission did receive a copy of the Final Order by inter-agency mail when it was issued.

³ 1 DCMR § 2937.1 provides:

OAH shall serve all final orders on the parties by first-class mail. OAH also shall serve all final orders on the Rent Administrator and the Commission.

⁴ The Commission notes that the mailing address attributed to the Tenants that is included in the certificate of service (see Final Order at 5) is the same mailing address as the return address listed on the envelop that was used to mail the Tenants notice to the Commission and is the same address that appears below the original signatures of the Tenants on the lower right corner of the face of the notice of appeal that was received by the Commission August 22, 2016 (2472 Medford Ct., Crofton, MD 21114).

II. PRELIMINARY ISSUES

A. **The Tenants' Notice of Appeal Was Untimely Filed**

Pursuant to the Commission's rules 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 final decision is mailed to the parties. *See, e.g., Novak v. Sedova*, RH-TP-15-30,653 (Nov. 20, 2015) at 2.

Pursuant to 14 DCMR § 3816.3, weekend days and legal holidays are excluded from the computation of time periods of ten days or less.

Here, the certificate of service states that the Final Order was sent by first class mail on July 26, 2016. As such, pursuant to §§ 3802.2 and 3816.3, the Tenants had until August 12, 2016, to file the Notice of Appeal. However, the Tenants' Notice of Appeal was not received by the Commission until August 22, 2016,⁵ a total of six business days after the filing due date.

Review of the exterior portion of the envelop within which the Tenants' Notice of Appeal was received in displays a postmark mailing date of August 9, 2016, indicating that the Tenants would have had three business days within which to file. However, the Commission is without remedy to resolve any issue that could potentially arise concerning the time lag that exists between postmark date and the date the Commission received the filing in favor of the Tenants.

14 DCMR § 3801.2 and .3, provide:

3801.2 No pleading or other documents shall be deemed filed until actually received at the Commission's office and compliance with time requirements shall be calculated from the date of actual receipt.

3801.3 All pleadings and other documents filed with the Commission shall be promptly date-stamped by the Commission staff and entered into the Commission's daily log.

⁵ Tenants' Notice of Appeal was received by the Rental Housing Commission on August 22, 2016 and date stamped "Received Rental Housing Commission" August 22, 2016 2:44 P.M.

As such, under 14 DCMR §§ 3802.2 and 3816.3, the Tenants' Notice of Appeal was untimely filed.

"The law requires that the Commission dismiss all untimely appeals, because time limits are mandatory and jurisdictional." Robinson v. Hagner Mgmt. Corp., TP 24,935 (Nov. 27, 2000) at 1-2; (citing United States v. Robinson, 361 U.S. 209 (1960); Lee Yu v. D.C. Rental Hous. Comm'n, 505 A.2d 1310 (D.C. 1986); Totz v. D.C. Rental Hous. Comm'n, 474 A.2d 827 (D.C. 1974)); *see* Chen v. Moy, RH-TP-08-29,340 (RHC Mar. 27, 2012); Pinnacle Realty Mgmt. v. Doyle, TP 27,067 (RHC Aug. 8, 2008); Haka v. Gelman Mgmt. Co., TP 27,442 (RHC Feb. 9, 2006); Freeman v. Hamilton, TP 28,282 (RHC Jan. 17, 2006) at 2-3; C.I.H. Props. v. Torain, TP 24,817 (RHC July 17, 2000) at 6-7. Moreover, "the Commission [] cannot extend the time period for filing appeals" pursuant to 14 DCMR § 3816.6.⁶ Robinson, TP 24,935 at 2; *see also* Chen, RH-TP-08-29,340 at 4; Torain, TP 24,817 at 6-7 n.5. Therefore, in view of the untimely receipt and filing of the Tenants' Notice of Appeal, six business days after the August 12, 2016, deadline, the Commission is compelled to dismiss the appeal in this matter.

Accordingly, the Tenants' Notice of Appeal is dismissed as untimely.

B. The Tenants' Notice of Appeal Is Legally Insufficient

Although the Notice of Appeal is dismissed for the reasons discussed *supra* in issue A, the Commission also determines that it should be dismissed on the following, alternative grounds. The Commission's rules at 14 DCMR § 3825.2 require a notice of appeal to include all of the following:

⁶ 14 DCMR § 3816.6 (emphasis added) provides:

The Commission, for good cause shown, may enlarge the time prescribed, either on motion by a party or on its own initiative; provided, that the Commission does not enlarge the time for filing a notice of appeal.

- (a) The name and address of the appellant and the status of the appellant (e.g., housing provider, tenant or intervenor);
- (b) The . . . case number, the date of the . . . decision appealed from, and a clear and concise statement of the alleged error(s) in the decision[;]
- (c) The signature of the appellant or the appellant’s attorney, or other person authorized to represent the appellant; and
- (d) The signatory’s address and telephone number.

The Commission’s rules also require that a notice of appeal contain proof of service. *See Pena v. Woynarowsky*, RH-TP-06-28,817 (Feb. 8, 2008) at 1-2. Specifically, the rules governing service state:

3801.8 All pleadings and other documents shall be served on the opposing party or parties prior to or at the same time as filed with the Commission and shall contain proof of service as required by § 3803.7.

3802.4 The notice of appeal shall be served on opposing parties prior to or at the same time it is filed with the Commission and shall contain proof of service as required by § 3803.7.

3803.7 Proof of service upon parties shall be provided for all pleadings and other documents, shall be in writing, and shall show the date, person served, address at which service was made, and the manner of service.

14 DCMR §§ 3801.8, 3402.4, & 3803.7 (2004); *see also Pourbabai v. Bell*, RH-TP-13-30,448 (RHC Aug. 10, 2015). As well, the Commission rules require the proponent of a notice of appeal to provide multiple copies of pleadings at the time of filing. *See* 14 DCMR § 3801.7.

The Commission is mindful of the vitally important role non-attorney litigants play in the enforcement of the Act. In assessing notices of appeal the Commission has stated:

The Commission is mindful of the important role that lay litigants play in the Act’s enforcement. *Goodman v. D.C. Rental Hous. Comm’n*, 573 A.2d 1293, 1298-1299 (D.C. 1990); *Cohen v. D.C. Rental Hous. Comm’n*, 496 A.2d 603, 605 (D.C. 1985). Courts have long recognized that pro se litigants can face considerable challenges in prosecuting their claims without legal assistance. *Kissi v. Hardesty*, 3 A.3d 1125, 1131 (D.C. 2010) (citing *Hudson v. Hardy*, 412 F.2d 1091, 1094 (D.C. Cir. 1968)). The DCCA has noted that “[i]n matters involving pleadings, service of process, and timeliness of filings, pro se litigants are not

always held to the same standards as are applied to lawyers.” Padou v. District of Columbia, 998 A.2d 286, 292 (D.C. 2010) (quoting Macleod v. Georgetown Univ. Med. Ctr., 736 A.2d 977, 980 (D.C. 1999), *cert. denied*, 528 U.S. 1188 (2000)). Especially in cases involving remedial statutes like the Act, courts and administrative agencies have been more disposed “to grant leeway to” pro se litigants. Macleod v. Georgetown Univ. Med. Ctr., 736 A.2d at 980. *See e.g.*, Rhea v. Designmark Serv. Inc., 942 A.2d 651, 655 (D.C. 2008) (“[T]he Unemployment Compensation Act, like the Rental Housing Act, ‘relies largely on lay persons, operating without legal assistance, to initiate and litigate administrative and judicial proceedings.’” (quoting Goodman v. D.C. Hous. Comm’n, 573 A.2d at 1299)).

Nonetheless, “while it is true that a court must construe pro se pleadings liberally . . . the court may not act as counsel for either litigant.” Flax v. Schertler, 935 A.2d 1091, 1107 n.14 (D.C. 2007) (quoting Bergman v. Webb (In re Webb), 212 B.R. 320, 321 (Bankr. Fed. App. 1997)). As the DCCA has asserted, a pro se litigant “cannot generally be permitted to shift the burden of litigating his case to the courts, nor to avoid the risks of failure that attend his decision to forego expert assistance.” Macleod v. Georgetown Univ. Med. Ctr., 736 A.2d at 979 (quoting Dozier v. Ford Motor Co., 702 F.2d 1189, 1194 (D.C. Cir. 1993)).

Chen, RH-TP-08-29,340 at 4. Moreover, the Commission may dismiss any notice of appeal that fails to comply with §3802.5. 14 DCMR § 3802.13.⁷

The Commission’s review of the Notice of Appeal reveals that the Tenants failed to meet all of the requirements outlined above. Notwithstanding its compliance with subsections (c) and (d) of § 3802.5, the Notice of Appeal fails to satisfy subsection (a) of § 3802.5. By including an address, telephone number, and original signatures, the Tenants’ Notice of Appeal satisfied both subsections (c) and (d). However, the Notice of Appeal does not comply with subsection (a) because it fails to include “the status of the appellant (e.g. housing provider, tenant or

⁷ 14 DCMR § 3802.13 provides:

The Commission may dismiss the appeal for failure to comply with the requirements of § 3802.5.

The Commission notes that, although the Notice of Appeal was date-stamped and logged by the Commission’s staff, 14 DCMR § 3801.6 provides:

The receipt of a pleading or other document which is not timely or which does not comply with the substantive requirements of this title shall not constitute a waiver of the requirements of this title; and any such pleading or document may be rejected by the Commission.

intervenor)” anywhere within the four corners of the one page document. Additionally, it appears that the Tenants failed to serve on the Housing Provider a copy of the Notice of Appeal, in violation of 14 DCMR § 3803.7. Nowhere on the one-page document does it indicate or reference that the Housing Provider was served with a copy of the Notice of Appeal. *See* Notice of Appeal at 1; Pena, RH-TP-06-28,817 (Feb. 8, 2008) (citing Kamerow v. Baccous, TP 24,407 (Jan. 28, 2000); cited in Assalaam v. Lipinski, TP 24, 726 (Aug. 31, 2000)). Finally, the Tenants failed to provide the Commission with the proper number of copies of the notice of appeal at the time of filing. 14 DCMR§3801.7.⁸

In addition to the numerous shortcomings in filing and service of the Notice of Appeal, failure to comply with any one of the mandated requirements enumerated in § 3802.5 can be fatal and give rise to the dismissal by the Commission. 14 DCMR § 3802.13.⁹ Therefore, the Commission rejects the Tenants pleading as insufficient.

Accordingly, the Tenants’ Notice of Appeal is dismissed for failure to comply with the Commission’s filing and content requirements.

⁸ 14 DCMR § 3801.7 provides:

Unless otherwise required, all pleadings and other documents shall be filed in an original and four (4) identical copies.

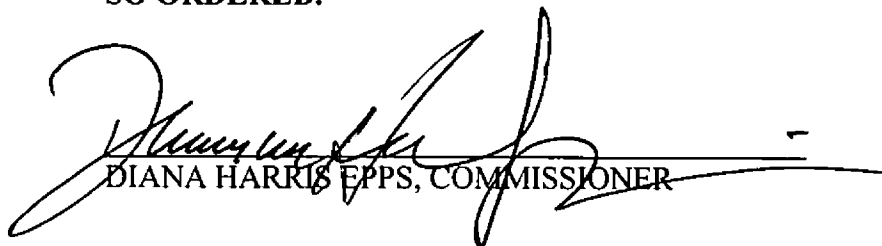
⁹ 14 DCMR § 3802.13 provides:

The Commission may dismiss the appeal for failure to comply with the requirements of § 3802.5.

IV. CONCLUSION

In view of the untimeliness of the Tenants' Notice of Appeal, the lack of proof of service on the opposing party, and the insufficiency of the notice itself, the Tenants' appeal of the Final Order is dismissed.

SO ORDERED.



DIANA HARRIS EPPS, 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 (2016.), "[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

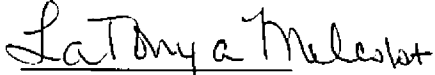
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER DISMISSING APPEAL** in RH-TP-16-30,800 was mailed, postage prepaid, by first class U.S. mail on this **30th day of August, 2016**, to:

Craig Philip
2472 Medford Court
Crofton, Maryland 21114

Juan DeLaCruz
2472 Medford Court
Crofton, Maryland 21114

Brian Riger, Esq.
6001 Montrose Road
Suite 701
Rockville, Maryland 20852


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