

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 26,197

In re: 4248 4th Street, SE #102
4283 6th Street, SE #201
4285 6th Street, SE #202
4287 6th Street, SE #102
4291 6th Street, SE #301
4297 6th Street, SE #201
4297 6th Street, SE #202^{*}

Ward Eight (8)

**CASCADE PARK APARTMENTS AND
CASCADE PARK PARTNERS, LLC**
Housing Providers/Appellants

v.

**URNA WALKER,
ERROL SMITH,
CONSTANCE JACKSON,
FRANCIS WALKER,
CLEM YOUNG,
ALSTON CYRUS, AND
RAYMOND FRAZIER**
Tenants/Appellees

ORDER ON PENDING MOTIONS

May 1, 2017

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (“Commission”) from an order issued by the Rental Accommodations Division (“RAD”) of the Department of Housing and Community Development (“DHCD”), based on a petition filed with the Rental Accommodations and Conversion Division (“RACD”) of the

* The Commission notes that several, inconsistent lists of affected rental units have appeared in the caption of various motions and orders in the record of this case and on appeal. The Commission has reconstructed the list of units based on its review of the record and ordered the units first by street name, then by street address, and then by unit number. The Commission has ordered the list of named tenants/appellees in the caption to correspond to the listed order of each tenant’s respective rental unit, as it appears from the Commission’s review of the record. The Commission requests that any corrections to this listing be filed promptly by counsel for either or both parties.

Department of Consumer and Regulatory Affairs (“DCRA”).¹ The applicable provisions of the Rental Housing Act of 1985, D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01 - 3509.07 (2001), the District of Columbia Administrative Procedures Act (“DCAPA”), D.C. OFFICIAL CODE §§ 2-501 - 510, and the District of Columbia Municipal Regulations (“DCMR”), 14 DCMR §§ 3800-4499, govern these proceedings.

I. PROCEDURAL HISTORY

On January 11, 2001, tenant/appellant Urna Walker filed tenant petition TP 26,197 on behalf of herself and ten other tenants (“Tenants”) of the housing accommodation known as the Cascade Park Apartments (“Housing Accommodation”). This case is now before the Commission on appeal for the third time. *See Cascade Park Apts. v. Walker*, TP 26,197 (RHC Jan. 14, 2005) (“First Commission Decision”) and *Cascade Park Apts. v. Walker*, TP 26,197 (RHC Nov. 18, 2014) (“Second Commission Decision”). The Second Commission Decision remanded this case to the Rent Administrator with instructions to reissue the final order from which the second appeal was taken, *Walker v. Cascade Park Apartments*, TP 26,197 (RAD Jan. 30, 2008) (“2008 RAD Final Order”); R. at 1259-66, and to properly serve housing provider/appellant Cascade Park Partners, LLC (“Housing Provider”).² On October 25, 2016, the Housing Provider filed a notice of appeal (“Notice of Appeal”) from the final order issued

¹ The functions and duties of RACD were transferred to 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.). This case arose and had a hearing prior to the Office of Administrative Hearings assuming jurisdiction over tenant petitions from RACD pursuant to the Office of Administrative Hearings Establishment Act of 2001, D.C. Law 14-76; D.C. OFFICIAL CODE § 1831.01(b-1)(1) (2012 Repl.).

² The Commission notes that one of the primary legal issues and contentions made in the Notice of Appeal appears to be that the Appellant “was not a housing provider at any time pertinent” to the Tenant Petition. *See* Notice of Appeal at 2. Accordingly, the Commission will merely use the term “Housing Provider” in reference to the Appellant solely for administrative convenience, efficiency, and clarity. The Commission’s use of the term “Housing Provider” herein is not intended to, and does not, constitute in any way any legal conclusion regarding the merits of this issue related to the appropriate legal status of the Appellant as the “Housing Provider” in this appeal.

after remand by the Second Commission Decision, Walker v. Cascade Park Apartments, TP 26,197 (RAD Oct. 11, 2016) (“Reissued Final Order”); R. at 1267-73.

On October 27, 2016, counsel for the Tenants filed a Suggestion of Death stating that Tenant Errol Smith (“Tenant Smith”) died in January 2016 during the pendency of this case (“Smith Suggestion of Death”), including a copy of a certificate of death from the State of Maryland.³ On January 5, 2017, Cristeen Smith, widow of Tenant Smith and personal representative of his estate (“Smith Representative”), filed a motion to be substituted for Tenant Smith as a party (“Smith Motion for Substitution”), including a letter of administration from the D.C. Superior Court (“Superior Court”) naming the Smith Representative as the administrator of the estate of Tenant Smith.⁴

On November 30, 2016, counsel for the Tenants filed a Suggestion of Death stating that Tenant Urna Walker had also died in 2011 during the pendency of this case, including a copy of a certificate of death from the District of Columbia (“Walker Suggestion of Death”).⁵ The same day, counsel for Tenant Urna Walker filed a motion to withdraw as counsel for Tenant Walker (“Walker Motion to Withdraw”). No motion to substitute another individual for Tenant Walker as a party has been filed.

Finally, on April 21, 2017, counsel for the Tenants filed a motion for attorney Adrian Gottshall, Esq., to withdraw from representation of the Tenants (“Gottshall Motion to Withdraw”)

³ On November 30, 2016, counsel for the Tenants refiled the Smith Suggestion of Death because the original suggestion was not served on opposing counsel.

⁴ The Smith Motion for Substitution states that counsel for the Tenants contacted counsel for the Housing Provider to obtain consent to the motion, which was refused because the Housing Provider wanted to preserve the argument that Tenant Smith’s claims were extinguished upon his death. Smith Motion for Substitution at 5. However, no opposition to the Smith Motion for Substitution has been filed by the Housing Provider.

⁵ The Commission notes, for clarity, that its review of the record reveals that Tenant Urna Walker and Tenant Francis Walker asserted claims regarding separate rental units in the Housing Accommodation and that no familial relationship between them is apparent. See Walker v. Cascade Park Apts., TP 26,197 (RACD Sept. 3, 2002) (“First Final Order”) at 12; R. at 764.

because Attorney Gottshall has obtained other employment. The University of the District of Columbia David A. Clarke School of Law’s Housing and Consumer Legal Clinic (“UDC Clinic”) will continue its representation of the Tenants through supervising attorney Norrinda Brown Hayat, Esq., and student attorneys Rahul Tilva and Tijuana Barnes, who entered appearances on February 17, 2017.

II. DISCUSSION

A. Tenant Smith – Motion for Substitution of Personal Representative

The Commission has previously noted that the death of the appellant “deprive[s] it of a party.” Killingham v. Marina View Trustee, LLC, VA 07-017 (RHC Mar. 1, 2011) (Order Denying Motion to Dismiss). The Commission’s rules provide that, “[i]n the event of the death . . . of a party, the Commission may . . . upon request . . . of a party, substitute or add a person[.]” 14 DCMR § 3809.2.

When the Commission’s rules do not specifically resolve an issue, the Commission follows as guidance, as far as practicable, the procedures of the District of Columbia Court of Appeals (“DCCA”) or the Superior Court. *See* 14 DCMR § 3828.1.⁶ The DCCA rule related to death of a party provides, in relevant part:

If a party dies after a notice of appeal has been filed or while a proceeding is pending in this court, the decedent’s personal representative may be substituted as a party on motion filed with the Clerk by the representative or by any party. A party’s motion must be served on the representative in accordance with [D.C. App.] Rule 25. If the decedent has no representative, any party may suggest the death on the record, and the court may then direct appropriate proceedings.

D.C App. R. 43(a)(1). Similarly, the Superior Court rules provide the following:

⁶ 14 DCMR § 3828.1 provides the following:

When these rules are silent on a procedural issue before the Commission, that issue shall be decided by using as guidance the current rules of civil procedure published and followed by the Superior Court of the District of Columbia and the rules of the District of Columbia Court of Appeals.

If a party dies and the claim is not thereby extinguished, the Court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, shall be served on the parties as provided in [Super. Ct. Civ.] Rule 5 and upon persons not parties in the manner provided in [Super. Ct. Civ.] Rule 4 for the service of a summons, and may be served in any judicial district. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

Super. Ct. Civ. R. 25(a)(1).

Following these rules as guidance, the Commission has consistently allowed parties 90 days from the filing of a suggestion of death on the record to file a motion to substitute an appropriate party. *See, e.g., Smith Prop. Holdings Three (DC), LP v. Shiekh*, RH-TP-12-30,279 (RHC Nov. 30, 2016) (Order on Substitution); *Douglas v. Dorchester House Assocs., LLC*, RH-SF-09-20,098 (RHC Apr. 10, 2015) (Order Regarding Death of Tenant). As the Commission has recently determined, claims for rent refunds arising under the Act, as asserted in this case, are not extinguished by the death of a tenant, including claims that are pending in an administrative forum. *Shiekh*, RH-TP-12-30,279; *see* D.C. OFFICIAL CODE § 12-101;⁷ *Greater Se. Cmty. Hosp. v. Williams*, 482 A.2d 394, 396 (D.C. 1983) (“this jurisdiction has recognized that . . . survival statutes are remedial acts, to be liberally interpreted to effectuate their purposes”).⁸

⁷ D.C. OFFICIAL CODE § 12-101 provides:

On the death of a person in whose favor or against whom a right of action has accrued for any cause prior to his death, the right of action, for all such cases, survives in favor of or against the legal representative of the deceased.

⁸ On March 31, 2016, I, Chairman Peter Szegedy-Maszak, noted a potentially disqualifying conflict under the Code of Judicial Conduct for the District of Columbia in the case of *Sheikh*, RH-TP-12-30,279, because of a family relationship to counsel for one party. Accordingly, I have taken no part in the Commission’s deliberations on and issuance of the orders relating to the substitution of parties in that case. However, having reviewed the November 30, 2016, Order on Substitution and the December 22, 2016, Order Denying Reconsideration of Substitution in *Sheikh*, RH-TP-12-30,279, as relevant Commission precedent, I concur with my colleagues’ legal reasoning and conclusions with regard to the application of the survival statute, D.C. OFFICIAL CODE § 12-101, to administrative claims for rent refunds arising under the Act.

Based on its review of the Smith Motion for Substitution and its attached documentation, the Commission is satisfied that the motion was timely filed within 90 days of the suggestion of death on the record and that the Smith Personal Representative is a “duly-appointed personal representative” who may be substituted for Tenant Smith. Douglas, RH-SF-09-20,098; Killingham, VA 07-017; Mersha v. Marina Towers Apts. Town Ctr., LP, TP 24,970 (RHC Feb. 19, 2003). Accordingly, the Commission substitutes Christeen Smith as a party in place of Tenant Errol Smith.

B. Tenant Walker – Motion to Withdraw as Counsel

The Commission’s rules governing the withdrawal of an appearance as counsel provide, in relevant part, as follows:

3813.1 If an attorney or other person representing a party wishes to withdraw from a case pending before the Commission, a written motion for application to withdraw shall be filed.

3813.2 The motion shall state whether the party consents to or opposes the motion and whether the party will be unrepresented or will have substitute representation. A copy of the motion shall be served on the party and the party advised that he or she has the right to oppose the motion.

3813.3 The motion shall state the specific reasons for withdrawal and shall state whether the absence of representation will prejudice the rights of the party.

14 DCMR § 3813.

As noted *supra* at 3 the death of a tenant deprives the Commission of a party. Killingham, VA 07-017. More than 90 days have elapsed since the Walker Suggestion of Death was filed by counsel for the Tenants, and no motion for substitution of a personal representative has been made. *See* Super. Ct. Civ. R. 25(a)(1); Shiekh, RH-TP-12-30,279; Douglas, RH-SF-09-20,098, Killingham, VA 07-017. Counsel for the Tenants asserts that, as of the filing of the Walker Motion to Withdraw, no probate proceedings were open with respect to Tenant Urna

Walker. Walker Motion to Withdraw at 6.⁹ Consistent with 14 DCMR § 3813.2, counsel attempted to notify the Tenant's next of kin of the withdrawal. *Id.* at 8-11.¹⁰ For these reasons, the Commission is satisfied that the withdrawal of counsel will not prejudice the rights of the party. 14 DCMR § 3813.3.

Accordingly, the Commission grants the Walker Motion to Withdraw.

C. Attorney Gottshall – Motion to Withdraw as Counsel

The Commission's rules on the withdrawal of counsel are recited *supra* at 6. The Gottshall Motion to Withdraw states that the UDC Clinic attempted to contact all Tenants to obtain consent of the Tenants¹¹ (other than Tenants Smith and Urna Walker). Gottshall Motion to Withdraw at 6. Two Tenants who could be reached consented, and no response was received from three others. *Id.* The Gottshall Motion to Withdraw was served on all Tenants, informing them of their rights to oppose the motion or obtain other counsel, but the Tenants will

⁹ The Commission's review of the record indicates that the Tenants sought to enforce the 2008 Final Order by filing an action in Superior Court on April 3, 2008. *See* Reissued Final Order at 2-3; R. at 1271-72. The record does not reveal what the status of that proceeding is at this time, nor whether any party requested to be substituted for Tenant Urna Walker in that proceeding after her death in 2011.

¹⁰ The Commission observes that counsel for the Tenants attempted to contact Tenant Urna Walker's next of kin at 4297 6th Street, S.E., #201, certifying it to be her last known address. Motion to Withdraw at 8. The Commission's review of the record, however, indicates that Tenant Urna Walker filed this petition with respect to 4248 4th Street, S.E., Apt 102. *See* 2008 Final Order at 5 (correcting prior listings of address in decision and case caption as "4248 6th Street #102" and "4297 6th Street #201," respectively); R. at 1262. Additionally, the certificate of death that was submitted with the Walker Motion to Withdraw identifies Tenant Urna Walker's place of death as 4248 4th Street, S.E., #102, her address of record. Walker Motion to Withdraw at 13.

The Commission observes that Tenant Cyrus is identified in the record as Tenant Urna Walker's son, and that he resides in 4297 6th Street, S.E. #201. First Final order at 9; R. at 767. No change of address for Tenant Cyrus is in the record, and a notice of appearance of new law student counsel on behalf of the Tenants, filed with the Commission, indicates that as recently as October 22, 2016, counsel for the Tenants maintained contact with Tenant Cyrus. Moreover, the Gottshall Motion to Withdraw indicates that it was served on Tenant Urna Walker's next of kin at the same P.O. Box as it was served on Tenant Cyrus. Therefore, notwithstanding the inconsistency in the address used to reach Tenant Urna Walker, the Commission is satisfied that counsel has satisfied its obligation to serve the Walker Motion to Withdraw on the party and advise the party of the right to oppose the motion by sending it to her son's address of record. 14 DCMR § 3813.2.

¹¹ The Gottshall Motion to Withdraw states that the UDC Clinic attempted to contact Tenant Smith or next of kin through the Smith Representative and Tenant Urna Walker or next of kin through a P.O. box. Based on its resolution of the motions relating to the deaths of those Tenants, the Commission is satisfied that contact with the Smith Representative is sufficient and that Tenant Urna Walker (or next of kin) did not need to be contacted.

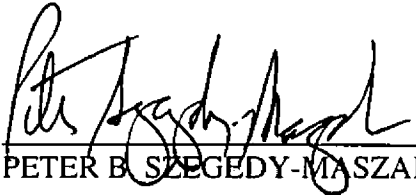
immediately have substitute counsel because the UDC Clinic will continue to represent them. See 14 DCMR § 3813.2. Accordingly, the Commission is satisfied that the Tenants will not be prejudiced by withdrawal of counsel. 14 DCMR § 3813.3.

Accordingly, the Commission grants the Gottshall Motion to Withdraw.

III. CONCLUSION

For the foregoing reasons, the Smith Motion for Substitution, the Walker Motion to Withdraw, and the Gottshal Motion to Withdraw are granted.

SO ORDERED.



PETER B. SZEGEDY-MASZAK, CHAIRMAN

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 (2001), "[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 ON PENDING MOTIONS** in TP 26,197 was mailed, postage prepaid, by first class U.S. mail on this **1st day of May, 2017**, to:

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