

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,067

In re: 1801 16th St., NW

Ward One (1)

PATRICK DOYLE, et al.
Tenants/Appellants/Cross-Appellees

v.

PINNACLE REALTY MANAGEMENT
Housing Provider/Appellee/Cross-Appellant

DECISION AND ORDER

March 10, 2015

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 District of Columbia Department of Housing and Community Development (DHCD), based on a petition filed with the Rental Accommodations and Conversion Division (RACD) of the Department of Consumer and Regulatory Affairs (DCRA).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 During the pendency of this case, the Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from DCRA 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 were transferred to RAD and 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.). Therefore, although this case originated with RACD, it was subsequently transferred to RAD. *See infra* at n.3.

I. PROCEDURAL HISTORY²

On March 30, 2001, Patrick Doyle filed Tenant Petition TP 27,067 (hereinafter “Tenant Petition”) on behalf of the Somerset Tenants Association (hereinafter, “Tenants Association”) regarding the housing accommodation located at 1801 16th Street, N.W. (hereinafter “Housing Accommodation”) alleging that Pinnacle Realty Management (hereinafter “Housing Provider”) violated the Act as follows: “Services and/or facilities provided in connection with the rental of my/our unit(s) have been permanently eliminated.” Tenant Petition at 1-4; Record for TP 27,067 (hereinafter “R.”) at 57-60. Hearing Examiner Terry Michael Banks issued a decision on September 7, 2001 dismissing the Tenant Petition because none of the tenants of the Housing Accommodation, or a representative for the Tenants Association appeared at a scheduled RACD hearing. Doyle v. Pinnacle Realty Mgmt., TP 27,067 (RACD Sept. 7, 2001) at 1-2; R. at 63-64. The Tenants Association filed a notice of appeal of Doyle, TP 27,067 (RACD Sept. 7, 2001), with the Commission, upon which the Commission determined that the record did not contain evidence that the Tenants Association, or any of its members, were properly notified of the RACD hearing. Doyle v. Pinnacle Realty Mgmt., TP 27,067 (RHC Dec. 20, 2001) at 3-4 (citing D.C. OFFICIAL CODE § 42-3502.16(c) (2001)); R. at 101-102. The Commission reversed Doyle, TP 27,067 (RACD Sept. 7, 2001), and remanded for a hearing *de novo*. *Id.* at 4.

A hearing was held before Hearing Examiner Keith Anderson (hereinafter “Hearing Examiner”) on March 18, 2003, and thereafter he issued a decision on August 15, 2003. Doyle, TP 27,067 (RACD Aug. 15, 2003) at 1. The Hearing Examiner concluded as follows, in relevant part: (1) the Tenants Association did not prove that it represented a majority of the tenants of the

² The Commission notes that a complete procedural history of this case prior to the RACD’s March 29, 2010 Decision and Order is contained in the Commission’s Decision and Order dated August 8, 2008. Pinnacle Realty Mgmt. v. Doyle, PT 27,067 (RHC Aug. 8, 2008). The Commission recites herein only the procedural history that is relevant to this current Decision and Order.

Housing Accommodation, and thus was not a proper party to the Tenant Petition; (2) the claims of tenants Linda Dalton, Afework Teklehaimanot, and Ruth Jones were barred by the doctrine of *res judicata*; (3) the removal of a roof deck from the Housing Accommodation was not a reduction in a related service or facility; (4) the claims regarding the removal of the roof deck were barred by the Act's statute of limitations. *Id.* at 10-15; R. at 333-38.

On September 3, 2003, the Tenants Association filed an appeal with the Commission, and the Commission issued its Decision and Order on August 2, 2005, providing as follows: (1) reversing the Hearing Examiner's determination regarding whether the Tenants Association represented a majority of the Tenants in the Housing Accommodation, and remanding for additional findings of fact and conclusions of law on which tenants the Tenants Association is authorized to represent; (2) reversing the Hearing Examiner's determination that the Act's statute of limitations bars the claim in the Tenant Petition; (3) reversing the Hearing Examiner's determination that the roof deck was not a related service or facility, and remanding for the Hearing Examiner to determine the value of the roof deck and make further findings of fact regarding the tenants' rents and rent ceilings and determine whether any rent refund or rent rollback is appropriate. Doyle, TP 27,067 (RHC Aug. 2, 2005) (hereinafter, "August 2005 Decision") at 4-18.

In response to the Commission's August 2005 Decision and Order, the Hearing Examiner issued a final order on May 31, 2007 (hereinafter "Final Order"), and made the following conclusions of law:

1. Pursuant to 14 DCMR Sect. §[sic]3904 (1991), the Somerset Tenant's [sic] Association represents a majority of the tenants at the subject property and shall appear in the case caption as the Petitioner [in] this matter. A 28-member majority of the 53 member Somerset Tenant's Association authorized Petitioner Doyle to represent them by proxy at the subject March 1[8], 2003

- hearing. Twenty-three, 23, of those tenants testified at said hearing. Each of the 23 tenants is identified in Findings of Facts 4.
2. The roof deck in question is a related facility, pursuant to Section 103(27) of the Act, as determined by RACD and affirmed by the Commission in prior proceedings concerning the permanent elimination of the roof deck at the subject property.
 3. Respondent permanently eliminated Petitioners['] roof deck related facility at the subject property, effective June 8, 1998, in violation of Sect. 211 of the Act, D[.]C[.] Official Code Sect. 42-3502.11 (2001) and 14 DCMR Sect. 4211 (1991).
 4. Pursuant to Findings of Fact 7, Petitioners Teklehaimonot and Dalton were precluded from pursuing their claims under the doctrine of res judicata. Petitioner Page was rejected for lack of standing.
 5. In accordance with the Act, the applicable regulations and case law, rent increase certificates contained in the RACD Registration File for the subject property, and the Commission's instructions on remand, Petitioners are entitled to a rent refund as set for the [sic] in Findings of Facts 9 and 10.
 6. Pursuant to Sect. 901(a) of the Act, and applicable regulations and case law, Petitioners are entitled to [a] roll back in their monthly rent charged, equal to the rent overcharge they suffered, for the period from April 2003 to the end of their respective tenancies, due to Respondent's violation of the Act.
 7. The [Hearing] Examiner took official notice of the RACD Registration File for 1801 – 16th Street, NW, at the March 18, 2003 hearing, pursuant to 14 DCMR Sect[.] 4007 (1991).

Final Order at 7-8; R. at 395-96.

On June 13, 2007 the Housing Provider filed a notice of appeal with the Commission, raising the following issues:

1. The Acting Rent Administrator erred in determining the rent ceilings because no evidence of rent ceilings was introduced into the record and there are insufficient Findings of Fact or Conclusions of Law with respect to the rent ceilings appearing in the Decision.
2. The Acting Rent Administrator violated the D.C. Administrative Procedures [sic] Act because he relied on documents that were never served upon or provided to counsel for the Housing Provider, i.e., "proxies," as stated by counsel for the Housing Provider in the hearing in this case on record.

