DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 28,270

In re: 3133 Connecticut Ave., N.W.
Unit 829

Ward Three (3)

KLINGLE CORPORATION and
B.F. SAUL COMPANY
Housing Providers/Appellants/Cross-appellees

v.

CHRISTINE BURKHARDT
Tenant/Appellee/Cross-appellant

DECISION AND ORDER

April 29, 2016

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission ("Commission") from a final order issued by the Rental Accommodation and Conversion Division ("RACD") of the Department of Consumer and Regulatory Affairs ("DCRA").[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 *et seq.* (2001), the District of Columbia Administrative Procedures Act ("DCAPA"), D.C. OFFICIAL CODE § 2-501 *et seq.* (2001), and the District of Columbia Municipal Regulations ("DCMR"), 14 DCMR §§ 3800-4399 (2004).

[1] The functions and duties of the former RACD were transferred to Rental Accommodations Division ("RAD") of the Department of Housing and Community Development ("DHCD") pursuant to § 2003 of the Rental Housing Operations Transfer Amendment Act of 2007, D.C. Law 17-20, D.C. Official Code § 42-3502.04b (2008 Supp.). An evidentiary hearing on the petition was held by the RACD before the Office of Administrative Hearings ("OAH") assumed jurisdiction over rental housing cases pursuant to § 6(b-1)(1) of the OAH Establishment Act of 2001, D.C. Law 14-76, D.C. Official Code § 2-1831.03(b-1)(1) (2007 Repl.).

I. PROCEDURAL HISTORY

On January 31, 2005, Christine Burkhardt ("Tenant"), residing in unit 829 of the housing accommodation located at 3133 Connecticut Avenue, N.W. ("Housing Accommodation"), filed tenant petition TP 28,270 ("Tenant Petition") with RACD. In the petition, the Tenant alleged that Klingle Corporation and B.F. Saul Company (collectively, "Housing Provider") violated the Act as follows: 1) the rent being charged for her unit exceeded the legally calculated rent ceiling; and 2) the rent ceiling filed with RACD for her unit was improper.

An RACD hearing on the petition was held on April 18, 2005, with Hearing Examiner Saundra M. McNair ("Hearing Examiner") presiding. The Hearing Examiner issued a final order on September 2, 2005: Burkhardt v. Kingle Corp., TP 28,270 (RACD Sept. 2, 2005) ("Final Order"); R. at 174. The Final Order contained the following findings of fact:

1. The subject housing accommodation, 3133 Connecticut Avenue, N.W., is properly registered with the RACD.

2. The Petitioner took possession of apartment #829 on or about June 29, 1994, and has resided at the subject premises at all relevant times, without interruption.

3. Respondent Klingle Corporation owns the subject property.

4. Respondent B.F. Saul Company manages the subject property.

5. The rent ceiling for Petitioner's rental unit at the time the Petitioner moved into her rental unit was $660.00 per month. The Respondent sought to take and perfect a 39.7% increase to the Petitioner's rent ceiling based on §213(a)(2) of the Act for a comparable unit (unit #729[sic]).

6. The current rent ceiling for Petitioner's rental unit is $1,011.00. The rent charged Petitioner during the period of November 2004 through September 2005 was $1,059.00 per month.

7. The Respondent did not file the proper forms with the RACD to increase the rent charged or the rent ceiling for Petitioner's rental unit in the subject property.

8. The Respondent did not provide proper notice to the Petitioner to prove its entitlement to an increased rent charge or increased rent ceiling for rental unit #829.

9. The Petitioner has provided sufficient evidence to meet her burden to challenge whether the rent charged exceeded the legally calculated rent ceiling for the subject property.

10. The Petitioner has provided sufficient evidence to meet her burden to challenge whether the rent ceiling filed with the RACD for her unit is improper.

11. The Respondent "knowingly" and "willfully" violated the Act.

12. The Petitioner is entitled to a claim for treble damages.

Final Order at 5-6; R. at 169-170.

The Hearing Examiner made the following conclusions of law:

1. The Petitioner has proven, by a preponderance of the evidence, that the rent ceiling for her unit is improper.

2. The Petitioner has proven, by preponderance of the evidence, that the rent charged for her rental unit exceeds the legally calculated rent ceiling for rental unit #829.

3. The Petitioner has proven, by a preponderance of law [sic], that the Respondent has knowingly, willfully, and in bad faith implemented an improper and invalid increase to the rent ceiling for Petitioner's rental unit, in violation of D.C. Official Code §42-3502.06.

4. The Petitioner is entitled to a rent refund in that the rent charged to Petitioner in [sic] exceeded the legally calculated rent ceiling for Petitioner's rental unit. The Petitioner is also entitled to a rent rollback for Respondent's implementation of an illegal rent increase for Petitioner's unit. The total amount due to the Petitioner is $2,641.50, including interest in the amount of $9.50 on the $2,632.00 overcharge amount, for Respondent's implementation of an illegal rent ceiling and rent charge increase pursuant to D.C. Official Code § 42-3502.06.

5. The Respondents shall pay a rent refund and rent rollback in the amount of $2,632.00, plus interest in the amount of $9.50 that has accrued from the beginning of the violation period through the date of the Decision and Order, because of the illegal and improper rent ceiling and rent charge increase for the Petitioner['s] rental unit. Accordingly, the total refund due the Tenant Petitioner is $2,641.60.

6. The Petitioner is entitled to a trebled rent refund for Respondent['s] failure to comply with the requirements of 14 DCMR [§] 4204.10 and [D.C. OFFICIAL CODE §] 42.3502.08(h)(2) for the eleven (11) months Respondent charged in excess of the legal rent ceiling for Petitioner['s] rental unit; and for the twenty-four (24) months that the Respondent charged a rent charged in excess of the legal rent charged for Petitioner's rental unit. The total trebled amount due to the Petitioner is $7,924.80, including interest in the amount of $9.50 on the $2,632.00 overcharge amount, for Respondent's violation of D.C. Official Code § 42-3502.08(h)(2).

Final Order at 22-23 (footnotes omitted); R. at 152-53.

The Housing Provider filed a notice of appeal with the Commission on September 30, 2005 ("Housing Provider's Notice of Appeal"), and the Tenant filed a notice of appeal with the Commission on October 3, 2005 ("Tenant's Notice of Cross-appeal"). On October 31, 2007, the Commission granted a motion by Blake Nelson, Wendy Nelson, and Michael Dolan ("Intervenors") to appear as intervenors in the appeal in support of the Tenant, with the condition that their participation would be limited to the filing of a brief. Klingle Corp. v. Burkhardt, TP 28,270 (RHC Oct. 27, 2007) (Order on Motion to Intervene) at 4-5.

On November 8, 2007, the Intervenors filed a brief in support of Tenant ("Intervenors' Brief"). The same day, the Tenant filed a brief ("Tenant's Brief") stating that she concurs with and adopts the arguments made in the Intervenors' Brief. Also on November 8, 2007, the Housing Provider filed a brief in support of its appeal ("Housing Provider's Brief").

On November 19, 2007, the Housing Provider filed a brief in response to the Intervenors' Brief and the Tenant's Brief ("Housing Provider's Responsive Brief"). On November 28, 2007, the Intervenors filed a brief in response to the Housing Provider's Brief ("Intervenors' Responsive Brief"), with which the Tenant filed a concurring brief.[2]

[2] The Commission notes that there are several pending motions related to the filing and service of the briefs, and motions related to those motions. All outstanding motions are hereby denied as moot.

On January 25, 2008, Carol S. Blumenthal, Esq., entered an appearance as counsel for the Tenant. The Commission held its hearing on January 29, 2008.

II. ISSUES ON APPEAL[3]

On appeal to the Commission, the Housing Provider raises the following issues:

1. The hearing examiner erred when she refused to consider as valid and uncontroverted evidence a date-stamped copy of an amended registration form filed on July 29, 1994, which was both offered into evidence and is in the official registration file of which she took official notice.

2. The hearing examiner erroneously relied upon the Commission's decision in Sawyer Property Management, TP 24,991, which was not rendered until after the date of certain of the specific rent ceiling increases challenged by the tenant petition herein.

3. The hearing examiner erroneously ignored the Act's three-year limitation period when considering the anniversary date of Housing Provider's filing with respect to the adjustments of general applicability on the subject property.

4. The hearing examiner misapplied and/or ignored the applicable statute of limitations in disallowing ceiling and rent adjustments and awarding damages.

5. The hearing examiner's decision was arbitrary and capricious in that she misinterpreted and misapplied the Unitary Rent Ceiling Adjustment Act in reaching her decision.

6. The hearing examiner lacked jurisdiction to impose a fine because fines may be imposed only in accordance with the Civil Infractions Act.

7. There was no factual or legal basis to support the imposition of a fine in this case; in addition, without standards to support the amount of fine imposed, the fine is unconstitutional.

8. There was no factual or legal basis for an award of treble damages in this case.

See Housing Provider's Notice of Appeal at 1-2.

[3] The Commission, in its discretion, has re-ordered issues 3 and 4 on appeal to group for ease of discussion and to group together issues that involve the application and analysis of common facts and legal principles. *See, e.g.,* B.F. Saul Co. v. Nelson, TP 28,519 (RHC Feb. 18, 2016) at n.14; Tenants of 2300 & 2330 Good Hope Rd., S.E. v. Marbury Plaza, LLC, CIs 20,753 & 20,754 (RHC Mar. 10, 2015) at n.15.

On appeal to the Commission, the Tenant raises the following issue:

1. The Petitioner appeals the Hearing Examiner's Decision and Order of September 2, 2005 because the Hearing Examiner erred when she barred challenges to any rent ceiling or rent increase prior to February 2002.

See Tenant's Notice of Cross-appeal at 1.

III. DISCUSSION OF THE HOUSING PROVIDER'S ISSUES

1. [Whether the] [H]earing [E]xaminer erred when she refused to consider as valid and uncontroverted evidence of a date-stamped copy of an amended registration form filed on July 29, 1994, which was both offered into evidence and is in the official registration file of which she took official notice.

The Housing Provider maintains that the legal basis for the increase in rent charged to the Tenant that was implemented on November 1, 2004, was a rent ceiling adjustment reflected in an Amended Registration Form filed on July 29, 1994, pursuant to a vacancy rent ceiling adjustment in the amount of $262. In the Final Order, the Hearing Examiner concluded that the Housing Provider had not properly taken and perfected the 1994 vacancy adjustment. Final Order at 6; R. at 169.

The Housing Provider asserts on appeal that the Hearing Examiner erred in finding the June 29, 1994, vacancy rent ceiling adjustment to be improperly taken and perfected. Housing Provider's Brief at 3. Specifically, it maintains that the Hearing Examiner should have accepted the date stamp on the Amended Registration Form (Petitioner's Exhibit 1; R. at 121) ("June 29 Form") as clear evidence that it was timely filed within thirty days of its effective date.[4] In the Final Order, the Hearing Examiner found, regarding the filing of the

[4] The Commission notes that the parties do not dispute that the Tenant moved into the rental unit on June 29, 1994. *See* Final Order at 5; R. at 170. The Commission further observes that the Tenant alleged at the evidentiary hearing that the rental unit had been vacant prior to the date she moved in. Hearing Tape 2 (RACD Apr. 18, 2005) at 33:00. Nonetheless, neither party has raised any issue on appeal regarding whether June 29, 1994, was the date that the Housing Provider was "first eligible" to take and perfect the vacancy adjustment. *See* D.C. OFFICIAL CODE § 42-3502.13(a) (authorizing rent ceiling adjustment "when a tenant vacates a rental unit"); 14 DCMR § 4204.10(c) (notice must be filed and served within 30 days); *cf.* Burkhardt, RH-TP-06-28,708 (rejecting argument that rental

June 29 Form, that:

> The year of the date-stamped and filed document cannot be seen on the document[,] and the [Hearing] Examiner is unable to determine the year that this document was date-stamped and filed with the RACD. Moreover, the [Tenant] alleges that the date-stamp of the Amended Registration was changed and falsely reported as June 29, 1994 when it was in fact June 19, 1994. Conversely, the [Housing Provider] purports that the document was date-stamped July 29, 1994. Therefore, the [Hearing] Examiner can only accept the date of the document that is able to be viewed, July 29; the year of the document is undeterminable.

Final Order at 3 n.1; R. at 172.

Notwithstanding the Housing Provider's contentions that the date stamp on the June 29 Form is clear[5] and that the document should therefore be considered "authentic," *see* Housing Provider's Brief at 3-5, the Hearing Examiner also determined that the Housing Provider "did not provide proper notice to the [Tenant] to prove its entitlement to an increased rent charge or increased rent ceiling for rental unit #829." Final Order at 6; R. at 169. The Hearing Examiner specifically noted that the Tenant "testified that the [Housing Provider] did not provide the notice required by 14 DCMR [§§] 4204.10 . . . and 4207.5." *Id.*[6] The Commission's review of the record reveals that the Tenant testified that the Housing Provider neither posted a copy of the July 29 Form in a conspicuous place at the rental unit nor mailed her a copy of it. Hearing Tape 2 (RACD Apr. 18, 2005) at 37:00-38:00.[7]

The Commission's standard of review of the Final Order is contained in 14 DCMR § 3807.1 and provides the following:

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unit became vacant on date prior tenant died, rather than date housing provider recovered possession from decedent's family).

[5] Based on the its review of the record, the Commission is satisfied that the Hearing Examiner correctly found that the only legible part of the date stamp on the June 29 Form is the day and month. R. at 121.

[6] The Final Order also states that the Tenant testified that the Housing Provider failed to give notice as required by 14 DCMR § 4205.7. However, 14 DCMR § 4205.7 governs increases in the rent charged to a tenant, not in the rent ceiling of a rental unit.

[7] *See also supra* at n.4.

> The Commission shall reverse final decisions of the Rent Administrator which the Commission finds to be 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 the Rent Administrator.

However, the Commission will not decide questions on appeal where no relief is available to the party raising an issue or, in other words, where the issue is moot. *See, e.g.,* McChesney v. Moore, 78 A.2d 389, 390 (D.C. 1951) (noting that "it is not within the province of appellate courts to decide abstract hypothetical or moot questions, disconnected with the granting of actual relief or from the determination of which no practical relief can follow"); B.F. Saul Co. v. Nelson, TP 28,519 (RHC Feb. 18, 2016) (invalidation of rent ceiling adjustment on one basis rendered alternative arguments moot) (citing BLACK'S LAW DICTIONARY at 1029-30 (8th ed. 2004) (defining "moot" as "[h]aving no practical significance; hypothetical or academic")).

Under the Act, a housing provider is permitted to increase the rent ceiling for a rental unit when that unit becomes vacant. D.C. OFFICIAL CODE § 42-3502.13 (2001).[8] The Commission's regulations on vacancy adjustments require that a housing provider must both file the proper documentation with the Rent Administrator and provide proper notice to the tenant of the affected unit. *See* 14 DCMR §§ 4101.6; 4204.10, 4207.5 (2004).[9]

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[8] D.C. OFFICIAL CODE § 42-3502.13(a) (2001) provides, in relevant part:

> When a tenant vacates a rental unit ... the rent ceiling may, at the election of the housing provider, be adjusted to: . . .
>
> (2) The rent ceiling of a substantially identical rental unit in the same housing accommodation, except that no increase under this section shall be permitted unless the housing accommodation has been registered under § 42-3502.05(d).

The Commission notes that the Rent Control Reform Amendment Act of 2006, effective August 5, 2006, D.C. Law 16-145, 53 DCR 4889, abolished rent ceilings. The Commission's review of the record reveals that all issues in this case arose under the prior version of the Act. Therefore, unless otherwise noted, all references and citations to the Act in this decision and order are to its text at the time the Tenant Petition was filed on January 31, 2005.

[9] 14 DCMR § 4101.6 (2004) provides: