DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-19-31,209 & RH-TP-22-31,512

In re: 1444 Corcoran Street, NW #4
Ward Two (2)

PAUL A. STERMAN
Tenant/Appellant

v.

GEORGE FARRAH,
Housing Provider/Appellee

ORDER DISMISSING APPEAL

December 22, 2023

CARMICHAEL, ADMINISTRATIVE JUDGE: This case is on appeal to the Rental Housing Commission ("Commission") from a final order issued by 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] 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

[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 OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.03 - 1831.03(b-1)(1) (2012 Repl.). 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.).

Municipal Regulations ("DCMR"), 1 DCMR §§ 2800-2899 (2016), 1 DCMR §§ 2920-2941 (2016) ("OAH Rules"), and 14 DCMR §§ 3800-4399 (2004 & 2021),[2] govern these proceedings.

Tenant/appellant Paul Sterman ("Tenant") filed his notice of appeal ("Notice of Appeal") with the Commission on August 2, 2023, and simultaneously filed a motion requesting the Commission remand this case for a "*de novo* statutory hearing" ("Motion for Remand"). On September 26, 2023, the Commission issued an Order to Show Cause requesting that the Tenant demonstrate and/or explain why his Notice of Appeal should not be dismissed and that the claims therein were "warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law." *See* 14 DCMR § 3801.15(a) (2021). Tenant filed his timely response on October 11, 2023 ("Tenant's Response"). For the reasons discussed below, the Tenant's appeal is dismissed.

I. PROCEDURAL HISTORY

The Commission notes that the Tenant has filed several tenant petitions regarding the above-captioned unit. We begin with previously adjudicated matters because the outcome of the Tenant's prior petitions weighs heavily on our determination that the Tenant's current appeal is frivolous and filed only to harass the Housing Provider or delay other proceedings.

A. Prior Litigation

The Tenant first challenged rent increases at the unit in question in 2018 in tenant petitions 31,049 and 31,140 ("First Tenant Petitions"). Administrative Law Judge Ann Yahner ("ALJ Yahner") issued a Final Order on those petitions on December 19, 2018 ("First Final

[2] On December 31, 2021, new rules took effect to amend the applicable chapters of Title 14 of the DCMR. Pursuant to 14 DCMR § 3800.10 (2021), the Commission applies the prior rules to the facts of this case, to the extent they involve conduct before the effective date of the amendments, and the amended rules to its procedures on appeal.

Order"), concluding that the rental unit was not exempt from the rent stabilization provisions of the Act until May 22, 2018, invalidating the initial notice of rent increase, and awarding Petitioner $3,675 in rent refunds. ALJ Yahner, also concluded that the Housing Provider lawfully sent the Tenant a notice of rent increase in October 2018 that raised the rent effective December 1, 2018. *Id.* The Tenant appealed the First Final Order to the Commission, and moved to stay the OAH decision, which we granted on April 3, 2019 ("Commission Stay Order"). On November 23, 2021, after briefing and argument on the merits, the Commission affirmed the Final Order. Sterman v. Farrah, RH-TP-18-31,190 & RH-TP-18-31,049 (RHC Nov. 23, 2021) ("Commission Decision").

The Tenant then appealed the Commission Decision to the District of Columbia Court of Appeals ("DCCA"). Sterman v. D.C. Rental Hous. Comm'n, 21-AA-0823 (D.C. Apr. 20, 2023) ("DCCA MOJ"). The Tenant moved to stay our decision and DCCA initially granted his motion on December 12, 2021, but vacated that stay by the Housing Provider's motion on February 9, 2022. The DCCA ultimately affirmed the Commission Decision by memorandum of judgment on April 20, 2023. *See* DCCA MOJ. The Tenant sought reconsideration by the *en banc* court, which was denied. The mandate was issued on May 30, 2023, and the Tenant sought to have the DCCA recall its mandate, which was also denied. On June 21, 2023, the Tenant moved for the Commission to reconsider its November 23, 2021, decision and to sanction opposing counsel, which we immediately denied as untimely and an attempt to re-litigate issues the Tenant had previously lost or abandoned. Our order denying the motion cautioned the Tenant against further frivolous filings. Sterman v. Farrah, RH-TP-18,049 & RH-TP-18-31,140 (RHC June 22, 2023) ("RHC Order Denying Reconsideration and Sanctions").

B. Current Litigation

The Tenant's current appeal is based on two new separate petitions regarding the same rental unit and Housing Provider, TP 31,209 and TP 31,512 ("Second Tenant Petitions"). While the First Tenant Petitions were awaiting final disposition by first the Commission and then the DCCA, the Housing Provider continued to attempt to collect the increased rent from the Tenant. On April 22, 2019, the Tenant filed tenant petition 31,209, alleging unlawful rent demands, retaliation, and an unlawful notice to vacate. On October 31, 2019, ALJ Yahner issued a partial final order concluding that the Housing Provider violated the Rental Housing Act by retaliating against Tenant when he issued a March 21, 2019, 90-day Notice to Vacate, and ordered the Housing Provider to pay a fine of $250. Regarding the claim of an improper 30-day notice of a rent increase, Judge Yahner issued a stay of the proceedings pending the resolution of Tenant's appeal of the First Final Order, because the Tenant was challenging the rent level put in place in December 2018.

On May 19, 2022, the Tenant filed tenant petition 31,512 in response to a Demand for Back rent issued by the Housing Provider in February 2022. On April 3, 2023, the Tenant filed a motion for summary judgment in TP 31,512, apparently seeking once again to have the December 2018 rent increase declared illegal. Tenant's Motion for Summary Judgment, R. at Tab 26. On April 21, 2023, Administrative Law Judge Vergeer ("ALJ Vergeer") denied Tenant's motion for summary judgement in TP 31,512. On May 22, 2023, ALJ Vergeer consolidated TP 31,209 and TP 31,512 ("Second Tenant Petitions") and dismissed the Tenant's claim that that the December 2018 rent increase was illegal because OAH and the Commission, as affirmed by the DCCA, definitively "established that the property was exempt from the District's rent stabilization program such that the rent increase he imposed[,] effective December 2018 [,] was valid." Order Consolidating Tenant Petitions, Granting in part and Denying in part Respondent's

Motion (OAH May 22, 2023) at 5-6; R. at Tab 14. (quoting DCCA MOJ at 1). In addition to partially denying the Tenant's claim in TP 31,512, the ALJ awarded the Housing Provider attorney fees and ordered that its fee petition be filed by June 2, 2023. *Id.* The Housing Provider filed its fee petition by the deadline. On June 27, 2023, ALJ Vergeer reiterated that the Tenant's April 3, 2023, Motion for Summary Judgment was denied on the grounds that it was frivolous and awarded $2,460.00 in attorney's fees to the Housing Provider. Order Granting Respondent Attorneys' Fees, R. at Tab 7.

On July 21, 2023, ALJ Vergeer held a status hearing regarding tenant's claims of retaliation asserted in the Second Tenant Petitions. At that hearing, Tenant voluntarily dismissed his claims of retaliation because he was not allowed to relitigate his claims regarding the December 2018 notice of rent increase that has been denied by OAH, this Commission, and the DCCA. On July 21, 2023, the ALJ issued a final order concluding, in relevant part:

> Mr. Sterman's only argument against the allegedly impermissible notices is that the December 2018 rent increase was not valid, so the notices could not be valid. He made clear at the status hearing that he would attempt to relitigate the issue of the December 2018 rent increase at any evidentiary hearing. More than once, Mr. Sterman stated that he would only participate in an evidentiary hearing on the issue of the notices if he could once again argue that the December 2018 rent increase was illegal.
>
> . . . At this point, Tenant has no legitimate remaining claims. I hereby dismiss all remaining claims in TP 31,209 and TP 31,512 with prejudice.

Sterman v. Farah, RH-TP-22-31,209 & RH-TP-22-31,512 (OAH July 21, 2023) ("Second Final Order") at 4; R. at Tab 3.

On August 2, 2023, the Tenant filed his Notice of Appeal and Motion for Remand. On September 26, 2023, the Commission issued the Order to Show Cause. Tenant filed his timely response on October 11, 2023 ("Tenant's Response"). On October 27, 2023, the Housing

Provider filed its response to the Tenant's Response. The Tenant filed his reply to the Housing Provider's response on October 27, 2023.

II. DISCUSSION

As noted above, the Commission's Order to Show Cause directed the Tenant to explain why his Notice of Appeal should not be dismissed for a failure to demonstrate a good faith basis for the legal arguments contained therein as well as those raised in his Motion for Remand. The Commission was not satisfied that Tenant's Notice of Appeal and Motion for Remand served any purpose other than to harass the Housing Provider and delay final resolution of a matter that had previously been litigated through all available appeal processes. Consequently, the Commission determined that Tenant needed to demonstrate that legal arguments contained in the above-mentioned filings were not a frivolous recitation of issues previously decided. The Tenant's response to the Commission's Order to Show Cause does not persuade us that this appeal is not frivolous. Accordingly, for the reasons discussed below, Tenant's Notice of Appeal and Motion for Remand are respectively dismissed and denied.

The Tenant's Response fails to assuage or provide a sufficient counter to the Commission's view that his Notice of Appeal was: 1) frivolous; 2) designed to delay resolution of the matter at hand; and 3) designed to harass the Housing Provider. *See* Commission's Order to Show Cause. The Commission's rules make it clear that every party filing pleadings with the Commission is required to:

> [C]ertify that, to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (a) The pleading, motion, or other document is **not being filed for any improper purpose, such as to harass or to cause unnecessary delay** or needless increase in the cost of litigation;
>
> (b) Any factual assertions therein are true; and

(c) The **legal contentions therein are warranted by existing law or by a non-frivolous argument** for the extension, modification, or reversal of existing law or the establishment of new law.

14 DCMR § 3801.15 (2021) (emphasis added); *see also* D.C. App. R. 38 (if a party "takes an appeal . . . that is frivolous or interposed for an improper purpose, such as to harass or cause unnecessary delay . . . the court may, on its own motion . . . impose appropriate sanctions . . . includ[ing] dismissal of the appeal"). As discussed in the Order to Show Cause, Tenant himself admits that he filed his Notice of Appeal and Motion for Remand in this litigation to "stall the Landlord/Tenant action housing provider filed against him in the Superior Court for the District of Columbia." *See* Motion for Remand at 13. As discussed below, the Tenant's Response does not make any argument that suggests a proper purpose for his continued pursuit of this litigation. Consequently, the Commission has no other option than to dismiss this appeal.

The Tenant's Response advances two main arguments: 1) the Housing Provider is barred from demanding the rent owed under the 2018 rent increase because the Commission stayed the First Final Order in April 2019; and 2) he was entitled to and deprived of an evidentiary hearing before the OAH on the instant tenant petitions, and that Commission must remand these petitions to the OAH for such a hearing. These claims are based on a frivolous argument regarding the Housing Providers right to demand rent owed for the period between December 2018 through February 2022. The Tenant does not raise any issue about the Housing Provider's February 2022 demand for back rent that is not a challenge to the lawfulness of the December 2018 rent increase. The only remaining new issues relate to Tenant's claims of retaliation that he expressly abandoned before OAH.

A. Whether the Commission's Stay in the First Tenant Petitions Prevented the Housing Provider from Demanding Rent Owed Based on the December 2018 Increase

The Tenant argues that the Housing Provider is barred from demanding the rent owed under the 2018 rent increase because the Commission stayed the First Final Order in April 2019. This argument misstates and misinterprets the stay issued by the Commission. While it is true that the Commission issued a stay in April 2019, the stay was lifted once we issued a final decision expressly stating that the unit is exempt from rent stabilization, and that decision was ultimately affirmed by DCCA.

As noted, the First Final Order was issued on December 19, 2018, and concluded that the Housing Provider had properly claimed an exemption from the Act's rent stabilization provisions in May 2018 and thus lawfully increased the Tenant's rent on December 1, 2018. The Tenant appealed that determination, and on April 3, 2019, the Commission granted a stay of the First Final Order to the extent it held that the unit was exempt. The Commission noted in its order granting the stay that several of the Tenant's arguments raised on appeal were baseless and that his colorable arguments were also unlikely to succeed on the merits, but nonetheless viewed the possibility of his eviction as weighing heavily in support of a stay pending appellate review. Sterman v. Farrah, RH-TP-18-31-049 & RH-TP-18-31,140 (RHC April 3, 2019) ("Order Granting Stay").

On November 23, 2021, the Commission issued a decision and order on the Tenant's appeal, affirming the First Final Order on the two remaining grounds argued by the Tenant and concluding the rental unit was exempt from the Rent Stabilization Act after May 2018. Tenant appealed this Decision to DCCA. In his appeal to DCCA, the Tenant referenced a host of legal issues that he did not litigate before the Commission. However, the two claims considered by DCCA were: 1) whether his unit was not exempted from rent stabilization "because it was

transferred to [Mr. Farrah while] occupied under the same lease and not registered" with the RAD, and 2) whether his unit was not exempted because Mr. Farrah's new "small landlord claim [of exemption] was not disclosed to the remaining transferred tenants until eight years after the transfer." *See* DCCA MOJ at 4. The DCCA affirmed the Commission's rejection of both claims and found that Commission committed no error in forming its conclusions. *Id.*

In support of his argument that the Commission's April 2019 stay was never lifted and thus precludes the Housing Provider from demanding rent owed based on a December 2018 rent increase, the Tenant references a single piece of dicta regarding the back-rent demand from a March 2022 Commission order and his interpretation of § 3805.1 of the Commission's rules, as revised in December 2021. Tenant's Response to Show Cause Order at 12; *see* Sterman v. Farrah, RH-TP-18-31,049 & RH-TP-18-31,140 (RHC March 29, 2022) ("Order Denying Stay") at 4 n.2. However, the Tenant's reliance on this passing piece of dicta and interpretation of § 3805.1 is unreasonable. First, it has been made clear in several decisions and orders that the housing accommodation at issue was exempt as of May 2018 and as a result any rent increase notice after May 2018 was allowed. Furthermore, the Commission's footnote did not invalidate this finding but was meant to confirm for the *pro se* Tenant that the stay was no longer in effect after the decision on the merits and that the Housing Provider "has a right to increase the rent for his property because it is exempt." *See* Order Denying Stay at 4. Given that there has not been a stay in place since February of 2022 (when DCCA vacated its own, initial stay pending appeal) the Housing Provider was plainly within its right to demand the unpaid rent Tenant owed pursuant to the lawful December 2018 rent increase.

The Commission rule that the Tenant cites, 14 DCMR § 3805.1 (2021), is inapplicable for several reasons. That rule states that, if an appeal of an OAH order is filed with the Commission, "no party shall be . . . permitted to implement a rent increase . . . for which

administrative approval is required until the Commission disposes of the appeal". First, as noted *supra* n.2, the quoted version of this rule took effect December 31, 2021, three years after the rent increase at issue. Pursuant to 14 DCMR § 3800.10 (2021), the new rules do not regulate conduct by a housing provider that occurred before their effective date. The rent increase at issue here took effect several years earlier, and the demand for back rent was made after the first appeal was no longer before the Commission. Moreover, that rule is unrelated to the rent increase at issue here: it applies only in cases where a housing provider has filed a petition seeking prior approval by the Rent Administrator or OAH for certain rent adjustments allowable under the Act's rent stabilization program. *See* Cafritz Co. v. D.C. Rental Hous. Comm'n, 615 A.2d 222, 228 (D.C. 1992) (holding under prior rules that administrative orders granting approval were not automatically stayed). Even if the Housing Provider here were not exempt, 14 DCMR § 3805.1 (2021) would be inapplicable in this case because the Housing Provider was not petitioning for prior approval for that type of rent adjustment. *Compare* 14 DCMR § 4208.1 (2021) (Regulating rent ceiling adjustments in certain circumstances only with prior written approval from the Rent Administrator).

Given the above, the Tenant has not sufficiently shown cause as to why his appeal should not be dismissed.

B. Tenant Was Not Entitled to an Evidentiary Hearing at OAH After Abandoning His Only Non-Frivolous Claim

The Tenant argues that he was entitled to and deprived of an evidentiary hearing before OAH on the Second Tenant Petitions, and that the Commission must remand these petitions to OAH for such a hearing. This argument lacks merit because the record reflects the Tenant voluntarily dismissed his only non-frivolous claim negating the need for an evidentiary hearing. Thus, the Commission finds that Tenant's attempt to revive his retaliation claim is intended only

to harass the Housing Provider and avoid meeting the Housing Provider's demand for an increased rent payment.

As previously stated, the Second Tenant Petitions stem from the Tenant's original claims which have been adjudicated by OAH, the Commission, and DCCA. The only new claim before the Commission is the retaliation claim in TP 31,512, which stems from various actions the Housing Provider took against the Tenant, including, but not limited to, bringing eviction proceedings in Landlord/Tenant Court, and filing notice of back rent legally owed based on the December 2018 rent increase. However, during the July 2023 hearing before the ALJ, the Tenant abandoned the retaliation claim because he was denied the opportunity to relitigate the validity of the December 2018 rent increase. *See* Tr. at 9:5-12; 11:1-14 ("But the matter for me is I'm not willing to have an evidentiary hearing unless I'm going to have the right to argue that I was rent-controlled for those three years."); 12:15-22; and 13:9-12 (OAH July 21, 2023); R. of 31,209 Tab 4; *see also id.* at 48:14-16 ("I'm not going into a hearing at all with you, Mr. Vergeer, this is concluded."). This abandonment amounted to a voluntary dismissal under OAH Rule 2817.1. Consequently, the ALJ dismissed Tenant's claims based on Tenant's decision not to move forward with his case.

The ALJ's actions were consistent with the OAH Rules. First, OAH Rule 2817.1 states that a "party initiating [a] case may move to dismiss the case at any time." Secondly, OAH rules also state that cases before OAH may be decided "summarily, without an evidentiary hearing." OAH Rule 2819.1. Lastly, the OAH Rules clearly state that the presiding ALJ has the power to decide and/or determine if an evidentiary hearing is required by law. *See* OAH R. 2821.1. The ALJ also took extra care to explain his rationale for the dismissal in the Second Final Order, which concluded, in relevant part that:

> Mr. Sterman's only argument against the allegedly impermissible notices is that the December 2018 rent increase was not valid, so the notices could not be valid. He made clear at the status hearing that he would attempt to relitigate the issue of the December 2018 rent increase at any evidentiary hearing. More than once, Mr. Sterman stated that he would only participate in an evidentiary hearing on the issue of the notices if he could once again argue that the December 2018 rent increase was illegal.
>
> . . . At this point, Tenant has no legitimate remaining claims. I hereby dismiss all remaining claims in TP 31,209 and TP 31,512 with prejudice.

Second Final Order at 4.

Thus, when the actions of the ALJ and the OAH Rules are viewed collectively, the ALJ's action was plainly warranted and in accordance with the OAH Rules. The record clearly shows that: 1) Tenant was attempting to relitigate an issue that had already been decided by OAH, the Commission, and the DCCA; and 2) Tenant himself chose to dismiss his remaining claim, thus leaving the court without a case or controversy to hear. Given the above, there are no issues remaining for the Commission to review and as such there is nothing to be done by OAH if the Commission were to remand.

III. CONCLUSION

Tenant has failed to comply with the Commission's September 26, 2023, Order to Show Cause. The Tenant has failed to assuage or provide a sufficient counter to the Commission's determination that his Notice of Appeal was: 1) frivolous; 2) designed to delay resolution of the matter at hand; and 3) designed to harass the Housing Provider. Accordingly, Tenant's August 2, 2023, Notice of Appeal and Motion for Remand are dismissed.

SO ORDERED.

Toya Carmichael
Toya Carmichael (Dec 22, 2023 14:13 EST)

TOYA CARMICHAEL, ADMINISTRATIVE LAW JUDGE

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 (2012 Repl.), "[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-19-31,209 and RH-TP-22-31,512 was sent electronically on this **22nd** day of **December, 2023,** to:

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