

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-13-30,371

In re: 1841 Columbia Road, N.W, Unit 805

Ward One (1)

BYRON WATKINS
Tenant/Appellant

v.

ALCAZAR APARTMENTS
Housing Provider/Appellee

DECISION AND ORDER

July 28, 2017

EPDS, 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, 1 DCMR §§ 2921-2941, and 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 March 12, 2013, tenant/appellant, Byron Watkins (“Tenant” or “Mr. Watkins”), filed tenant petition RH-TP-13-30,371 (“Tenant Petition”) with the RAD against Alcazar Apartments (“Housing Provider”) regarding 1841 Columbia Road, N.W., Unit 805 (“Housing Accommodation”).² See Tenant Petition at 1-4; Record for RH-TP-13-30,371 (“R.”) at Tab 1A and Tab 1B. On June 6, 2013, the Housing Provider filed a motion to dismiss the Tenant Petition (“Motion to Dismiss”) on the grounds that the Landlord and Tenant Branch (“LTB”) of the Superior Court of the District of Columbia (“Superior Court”) had found Mr. Watkins’ company, Aedile, LLC, to be a commercial tenant of the Housing Accommodation. See Motion to Dismiss at 1; R. at Tab 3. On April 6, 2015, Administrative Law Judge Beverly Nash denied the Motion to Dismiss, determining that Mr. Watkins had sufficiently pled, in the Tenant Petition and in opposition to the Motion to Dismiss, that he, individually, was a residential tenant. Order Denying Housing Provider’s Motion to Dismiss at 3-4; R. at Tab 11.

On July 27, 2015, the Housing Provider filed Housing Provider’s Motion for Summary Judgment arguing that “as a matter of established law, the premises at issue was used as a commercial and not residential unit . . . the D.C. Rental Housing Act does not apply and all counts of the Tenant Petition must fail,” relying on the doctrine of collateral estoppel and prior orders of the LTB. Summary Judgment Motion at 1; R. at Tab 21. The August 7, 2015, the scheduled evidentiary hearing before Administrative Law Judge Margaret A. Mangan (“ALJ”) was converted to a status conference wherein Tenant agreed to file a response to the Motion for

² The Commission observes that the crucial matter disputed before OAH and in this appeal is whether Mr. Watkins had a commercial or residential lease with Alcazar Apartments for 1841 Columbia Road, N.W., Unit 805. See *infra* at 4-5. Although the terms “tenant,” “housing provider,” and “housing accommodation” are defined terms under the Act that relate solely to residential leases, see D.C. OFFICIAL CODE § 42-3501.03, the Commission uses these terms merely for convenience and consistency with the allegations made in the Tenant Petition and claims of error in the Notice of Appeal. The Commission does not make a legal determination at this time with respect to the nature of the lease between the parties for the premises.

Summary Judgment. Hearing CD (OAH Aug. 7, 2015). On August 21, 2015, the Tenant filed Petitioner's Response to Housing Providers Motion for Summary Judgment. R. at Tab 29.

The ALJ issued an order granting the Motion for Summary Judgment on December 8, 2015, and dismissed the Tenant Petition with prejudice: Watkins v. Alcazar Apartments, RH-DHCD-TP-30,371 (OAH Dec. 8, 2015) ("Final Order"); R. at Tab 30. The ALJ made the following findings of fact in the Final Order:³

1. Housing Provider leased Unit 805 at 1841 Columbia Road, NW, to Aedile, LLC, on May 1, 2011. Respondent's Exhibit (RX), 200 (A)
2. Mr. Watkins operated a business from Unit 805 at 1841 Columbia Road, NW. RX 202 (C) (Docket entry in 21012 -LTB-20850, October 12, 2012).
3. Housing Provider filed a commercial Landlord-Tenant Complaint (2012-LTB-20850) for Unit 805 at 1841 Columbia Road on December 6, 2012, for non-payment of rent. RX 201(B). (Complaint). Aedile, LLC was identified as Defendant in that case and Byron Watkins as Registered Agent.
4. Mr. Watkins defended the Landlord-Tenant action by arguing he was a residential tenant. Following a trial on October 12, 2012, the Superior Court judge entered Judgment for possession in favor of Housing Provider. RX 202 (docket).
5. The Court found that Ms. Watkins was a commercial tenant. No appeal of that determination was made.
6. Mr. Watkins did not vacate Unit 805 as ordered. Housing Provider sent him a Notice to Quit and filed 2012-LTB 33404 against Mr. Watkins for holding over after expiration of a commercial lease. RX 203(D). (Complaint and Notice to Quite).
7. Mr. Watkins defended the second Landlord and Tenant action by arguing he was a residential, not a commercial tenant. Housing Provider field a Motion for Summary Judgment on the basis that Unit 805 was subject to a commercial, not residential tenancy.
8. On February 22, 2013, the Court entered a Non-Redeemable Judgment for Possession in favor of Housing Provider. RX 205 (F) (docket).

³ The findings of fact are recited using the same language and number as used by the ALJ in the Final Order.

9. Mr. Watkins filed a Motion for Reconsideration and an Application to Stay Writ, which the Court denied. RX 206 (G) (Motion) 205 (F) (docket). No appeal was taken.
10. On March 12, 2013, Mr. Watkins filed this Tenant Petition.
11. Housing Provider filed a Motion to Dismiss the Tenant Petition on the basis that a commercial tenancy is not within the jurisdiction of OAH. Administrative Judge Beverly Nash denied that Motion under liberal pleading standards of Super. Ct. Civ. R. 129(b)(6), on April 6, 2015. Judge Nash noted Petitioner's assertion that he was unable to defend himself in Superior Court and that his extensive documentation could prove that his tenancy fell within the Rental Housing Act.

Final Order at 2-3 (footnote omitted); R. at Tab 30. The ALJ made the following conclusions of law in the Final Order:

1. OAH rules provide that a party may request that an Administrative Law Judge decide a case summarily, without an evidentiary hearing, so long as the motion includes sufficient evidence. OAH Rule 2819. The summary judgment standard set for in the Superior Ct. Civ. R. 56 (c) provides that:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.
2. The District of Columbia Court of Appeals (DCCA) described the substantive standard for entry of summary judgment in Behradrezaee v. Dashtara, 910 A. 2d 349, 364 (D.C. 2006):

Summary Judgment is appropriate only if no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. GLM Pship v. Hartford Cas. Ins. Co., 753 A.2d 995, 997-998 (D.C. 2000) (citing Colbert v. Georgetown Univ., 641 A. 2d 469, 472 (D.C. 1994) (en banc)). "A motion for summary judgment is properly granted if (1) taking all reasonable inferences in the light most favorable to the nonmoving party, (2) a reasonable juror, acting reasonably, could not find for the non-moving party, (3) under the appropriate burden of proof." Kendrick v. Fox Television, 659 A. 2d 814, 818 (D.C. 1995) (quoting Nader v. de Toledano, 408 A.2d 31, 42 (D.C. 1979)).
3. Although the moving party has the burden of demonstrating the absence of a genuine issue of material fact, "[o]nce the movant has made such a prima facie showing, the nonmoving party has the burden of producing

evidence that shows there is ‘sufficient evidence supporting the claim factual dispute . . . to require a jury or judge to resolve the parties’ differing versions of the truth at trial.” Kendrick v. Fox Television, 659 A.2d at 818 (quoting Nader v. de Toledano, 408 A. 2d at 48.

4. In his August 21, 2015 submission, Petitioner Watkins promised that he will present [“]irrefutable evidence that housing Provider has always treated & acknowledged Byron Watkins as a residential tenant.” Response at 1. Further, he argues that Housing Provider’s denial of residential tenancy is malicious and that Housing Providers succeeded in Superior Court by perjuring itself. *Id.*
5. Mr. Watkins characterizes the filing of the instant Tenant Petition as an appeal of the Superior Court actions. In the two Superior Court actions, judges determined that Aedile, LLC was a commercial tenant. Appeals from those decision[s] could have been taken to the District of Columbia Court of Appeals, but were not. Despite Mr. Watkins contention to the contrary, the Office of Administrative Hearings does not have jurisdiction to hear an appeal from Superior Court.
6. Further, the doctrine of collateral estoppel or issue preclusion precludes the re-litigation of factual or legal issues decided in a previous proceeding and essential to the prior judgment. Borger Mgmt., Inc. v. Sindram, 886 A.2d 52, 59 (D.C. 2005). Essential to the first of the two Superior Court cases was the determination that the defendant, Aedile, LLC, was a commercial tenant. Mr. Watkins’ argument that he was a residential tenant did not succeed. In the second of the Superior Court cases, again judgment was entered against Aedile and Mr. Watkins’ subsequent motion for reconsideration was denied. Essential to both judgments was the determination that Aedile, LLC, was a commercial tenant in Unit 805 at 1841 Columbia Road. The doctrine of collateral estoppel precludes Mr. Watkins from litigating the issue of residential vs. commercial tenancy again.
7. The Rental Housing Act was passed to address the “severe shortage of rental housing available to citizens of the District of Columbia.” D.C. OFFICIAL CODE § 42-3501.01(1). The Act protects residential, not commercial tenants. OAH jurisdiction is limited to deciding cases under the Rental Housing Act. Since there is no genuine issue as to the material fact that Aedile, LLC was a commercial tenant, Housing Provider’s Motion for Summary Judgment is Granted.

Final Order at 3-6; R. at Tab 30.

On January 14, 2016, the Tenant filed a Motion for Reconsideration. R. at Tab 31. The Housing Provider did not file a response. On February 24, 2016, the ALJ issued an order denying

the Tenant's Motion for Reconsideration. Watkins v. Alcazar Apartments, RH-DHCD-TP-30,371 (OAH Feb. 24, 2016); R. at Tab 32.

On March 8, 2016, Mr. Watkins timely filed Tenant's Notice of Appeal ("Notice of Appeal"), alleging that the ALJ erred by: (1) denying tenant's Motion for Reconsideration; (2) ignoring the Tenant's newly discovered evidence; and (3) overlooking the genuine issue of fact concerning whether the Tenant was a residential or commercial tenant and by granting the Housing Provider's Motion for Summary Judgment.⁴ *See generally* Notice of Appeal. The Housing Provider filed a brief ("Housing Provider's Brief") on June 17, 2017. The Commission held a hearing in this matter on June 13, 2017.

II. PRELIMINARY ISSUE

The Commission's review of the Final Order reveals that the ALJ determined that the doctrine of collateral estoppel⁵ precluded Mr. Watkins from re-litigating the issue of whether he had a residential versus commercial tenancy in the Housing Accommodation. Final Order at 4-5; R. at Tab 30. Moreover, the ALJ determined that OAH lacked jurisdiction to resolve the claims raised in the Tenant Petition because Mr. Watkins was found to be a commercial tenant by the Superior Court in the related LTB actions. Final Order at 4-5; R at Tab 30. Because the question of jurisdiction presents a threshold issue, the Commission will review the ALJ's determination that OAH lacked jurisdiction over the Tenant Petition before addressing the substantive issues raised on appeal. *See, e.g., Davis v. Tel-Court Cooperative, Inc.*, RH-TP-14-

⁴ The Commission observes that the Notice of Appeal filed by the Tenant contains nine pages of exclusively narrative statements, presented as a monologue supporting Tenant's underlying argument that the ALJ ignored the Tenant's newly discovered evidence. Nonetheless, despite the narrative presentation of the Notice of Appeal, the Commission, in its discretion, is satisfied that the Tenant has identified the cognizable claims of error stated above.

⁵ "Collateral estoppel applies not only to judicial adjudications, but also to determinations made by agencies other than courts, when such agencies are acting in a judicial capacity." Wilson v. Hart, 829 A.2d 511, 514 (D.C. 2003) (citing Hogue v. Hopper, 728 A.2d 611, 614 (D.C. 1999)); *see also* District Intown Props. v. District of Columbia Dep't of Consumer & Regulatory Affairs, 680 A.2d 1373, 1378 n.7 (D.C. 1996); Rosenboro v. Askin, TPs 3991 & 4673 (RHC Feb. 26, 1993) (citations omitted); Nwanko v. William J. Davis, Inc., TP 11,728 (RHC August 6, 1986).

30,604 (RHC Feb. 18, 2016); Woodner Apartments v. Taylor, RH-TP-07-29,040 (RHC Sept. 1, 2015) (stating that the Commission may raise issues of jurisdiction *sua sponte*); Vista Edgewood Terrace v. Rascoe, TP 24,858 (RHC Oct. 13, 2000) (an appellate court may *sua sponte* raise the issue of a court's jurisdiction).

The Commission's standard of review of an ALJ's decision is contained at 14 DCMR § 3807.1, which provides the following:

The Commission shall reverse final decisions of the Rent Administrator [or ALJ] 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 [or ALJ].

See D.C. OFFICIAL CODE § 2-509(e).⁶ The Commission reviews conclusions of law *de novo* to determine if they are unreasonable interpretation of the Act or embody a material misconception of the law. United Dominion Mgmt. Co. v. District of Columbia Rental Hous. Comm'n, 101 A.3d 426, 430-31 (D.C. 2014); Tenants of 1754 Lanier Pl., N.W. v. 1754 Lanier, LLC, RH-SF-15-20,126 (RHC Mar. 25, 2016).

The doctrine of collateral estoppel, also known as issue preclusion, gives controlling effect to judgments on specific issues of fact or law litigated in prior cases and "can be invoked against a party where (1) the issue was actually litigated; (2) was determined by a valid, final judgment on the merits; (3) after a full and fair opportunity for litigation by the party; (4) under circumstances where the determination was essential to the judgment." Wilson v. Hart, 829 A.2d at 514; Davis v. Davis, 663 A.2d 499, 501 (D.C. 1995) (quoting Washington Med. Ctr. v. Holle,

⁶ The DCAPA, at D.C. OFFICIAL CODE § 2-509(e), provides, in relevant part, as follows:

Every decision and order adverse to a party to the case . . . shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Findings of fact and conclusions of law shall be in accordance with the reliable, probative, and substantive evidence.

573 A.2d 1269, 1283 (D.C. 1990)); Carmel Partners, Inc. d/b/a Quarry II, LLC v. Levy, RH-TP-06-28,830 & RH-TP-06-28,835 (RHC May 16, 2014). Collateral estoppel may be used offensively or defensively. “Offensive use of collateral estoppel occurs when a plaintiff seeks to foreclose a defendant from re-litigating an issue the defendant has previously litigated unsuccessfully in another action against the same or a different party.” Modiri v. 1342 Rest. Group, Inc., 904 A.2d 391, 394 (D.C. 2006) (citing United States v. Mendoza, 464 U.S. 154, 159 n.4 (1984)). The Commission notes the present case concerns “defensive collateral estoppel” because the Housing Provider in its Motion for Summary Judgment sought to prevent the Mr. Watkins, from re-litigating the issue of a residential versus commercial tenancy, which the Housing Provider contends Mr. Watkins had litigated unsuccessfully in the Landlord/Tenant Branch actions. *See generally* Summary Judgment Motion; R. at Tab 21.

The District of Columbia Court of Appeals (“DCCA”) and the Commission have consistently held that, when used defensively, collateral estoppel and the related doctrine of *res judicata*, or “claim preclusion,” are affirmative defenses that must be pleaded and established by the party asserting them. Johnson v. District of Columbia Rental Hous. Comm’n, 642 A.2d 135, 139 (D.C. 1994); Jonathan Woodner Co. v. Adams, 534 A.2d 292, 296 (D.C. 1987); Gelman Mgmt. Co. v. Campbell, RH-TP-09-29,715 (RHC Mar. 11, 2015); Mann v. Johnson, TP 26,191 (RHC Nov. 21, 2005). Therefore, “[t]o evaluate a claim of preclusion, the trier of fact must ‘have before it the exhibits and records involved in the prior cases[.]’” Johnson, 642 A.2d at 139 (quoting Block v. Wilson, 54 A.2d 646, 648 (D.C. 1947)).

The Commission has previously determined that “collateral estoppel does not apply if the issues are not identical, “even if the issues are similar.” Marguerite L. Corsetti Trust v. Segreti, RH-TP-06-28,207 (RHC Sept. 18, 2012) (citing Short v. District of Columbia Dep’t of Emp’t

Servs., 723 A.2d 845, 849-50 (D.C. 1998); Hutchinson v. District of Columbia Office of Emp. Appeals, 710 A.2d 227, 236 (D.C. 1998). In Goldkind v. Snider Bros., Inc., 467 A.2d 468 (D.C. 1983), the DCCA, whose jurisprudence the Commission follows, stated the following on collateral estoppel:

The issue to be concluded must be the same as that involved in the prior action. In the prior action, the issue must have been raised and litigated, and actually adjudged. The issue must have been material and relevant to the disposition of the prior action. The determination made of the issue in the prior action must have been necessary and essential to the resulting judgment. If all of these elements are not present, there can be no collateral estoppel.

467 A.2d at 473 (emphasis added) (citations omitted); *see also* Rosenboro, TPs 3,991 & 4,673.

In her application of collateral estoppel, the ALJ found that, in the first LTB action: (1) Mr. Watkins defended the action by arguing he was a residential tenant; (2) “the Superior Court judge entered a Judgment for possession in favor of the Housing Provider;” and (3) “[t]he Court found that Byron Watkins was a commercial tenant.” Final at 3-4; R. at Tab 30. With respect to the second LTB action, the ALJ found that: (1) Mr. Watkins defended the action by arguing he was a residential, not a commercial tenant; (2) the Court entered a Non-Redeemable Judgment for Possession in favor of the Housing Provider; and (3) the Court denied Mr. Watkins’ motion for reconsideration. *Id.* The ALJ noted that “the doctrine of collateral estoppel or issue preclusion precludes the re-litigation of factual or legal issues decided in a previous proceeding and essential to the prior judgment” and thereafter concluded that “[e]ssential to both judgments was the determination that Aedile, LLC, was a commercial tenant in Unit 805 at 1841 Columbia Road” and that “[t]he doctrine of collateral estoppel precludes Mr. Watkins from litigating the issue of residential vs. commercial tenancy again.” Final Order at 4; R. at Tab 30.

The Commission observes that the only evidence cited by the ALJ to support the above findings and conclusions were the “Docket Sheet Summary” from each of the parties’ two LTB

actions by the Housing Provider against the Tenant's company, Aedile, LLC. *See IUP-UIP Alcazar, L.L.C. v. Aedile, LLC*, 2012 LTB 033404; *IUP-UIP Alcazar, L.L.C. v. Aedile, LLC*, 2012 LTB 02085; R. at Tab 25.⁷ The Commission's review of the record reveals a four-and-a-half-page "Docket Sheet Summary," and (2) a three-and-a-half-page "Docket Sheet Summary," each of which is cursory in nature and written in terse fashion memorializing a specific action taken by the court on a specific day.⁸ The Commission further notes that the ALJ referenced only one entry specifically: the docket entry from October 12, 2012, in 2012 LTB 033404, which reads in its entirety:

Trial Held; both parties present. Sworn testimony taken from both parties. Court findings and fact, this case is a commercial tenancy.

Final Order at 2; R. at Tab 30.

The Commission's review of the record, however, does not reveal any specific quotes from the respective judges, recordings, transcripts, or written orders (final or otherwise), memorandum, or findings⁹ as part of "Summary Docket Sheet" from each of the LTB actions

⁷ The Commission notes that multiple copies of the "Docket Sheet Summaries" appear throughout the OAH record on appeal. *See* R. at Tab 1B, Tab 7, Tab 22, Tab 25, & Tab 27. The Commission, bases its review of the record on the copies appearing at Tab 25, both of which contain, at the bottom of the last page, the Clerk, Superior Court of the District of Columbia "A True Copy Test" stamp from July 9, 2013, and what appears to be the signature of a "Deputy Clerk." *See* R. at Tab 25. The Docket Sheet Summaries bear the headings "2012 LTB 033404 IUP-UIP Alcazar, L.L.C. v. Aedile, L.L.C." and "2012 LTB 02085 IUP-UIP Alcazar, L.L.C. v. Aedile, L.L.C.," and, respectively, contain thirty-five separately-dated docket items and twenty-seven separately-dated docket items. *Id.* The Commission's review of the record reveals that the first LTB action was brought against Mr. Watkin's company, Aedile, LLC for possession of commercial property for non-payment of rent and that the second LTB action was brought against Aedile, LLC for holding over after expiration of a commercial lease. *Id.*

⁸ DCCA has described docket entries as follows: "ultimately may be useful in future litigation, their main purpose is to keep track of the proceedings, especially in a high-volume court." *See Jackson v. United States*, 924 A.2d 1016, 1021 (D.C. 2007) (citing *Goldsberry v. United States*, 598 A.2d 376, 381 (D.C. 1991)).

⁹ The Commission notes that Superior Court Rule 52 provides the following regarding express findings of fact and conclusions of law in cases:

Findings by the Court; Judgment on Partial Findings

(a) Effect. Unless expressly waived by all parties, the Court shall state findings of fact specially and state separately its conclusions of law in every action tried upon the facts without a jury or with an advisory jury and judgment shall be entered pursuant to Rule 58. . . Such findings of fact

upon which the ALJ could have determined or the Commission is able to undertake any meaningful review of whether the parties had a “full and fair opportunity to litigate for the purposes of issues preclusion.” Davis, 663 A.2d at 501-502 (D.C. 1995) (citing Oubre v. District of Columbia, 630 A.2d 699, 704 n.5 (D.C. 1993)).

The ALJ also did not make any findings of fact regarding: (1) whether the determinations made by the LTB judges were “valid/final judgments on the merits;” (2) whether the determination in the LTB cases with respect to the nature of the lease being a commercial not a residential lease or whether Mr. Watkins’ status as a commercial tenant and not a residential tenant were essential elements of the final decisions in those actions;¹⁰ and (3) whether the parties had a “full and fair opportunity to litigate” the issue of residential versus commercial tenancy; or (4) what actually occurred in the hearings themselves or under what specific circumstances the hearings were conducted. *See, e.g., Davis*, 663 A.2d at 501-502. Furthermore, the Commission’s review of the record does not reveal that the ALJ took official notice of the LTB’s “controlling factual and legal grounds of its decisions” that gave rise to the docket entries referenced in the Final Order. *See* D.C. OFFICIAL CODE § 2-509(b);¹¹ n.4; *cf. In re*

and conclusions of law may be in writing or may be stated orally in open court if recorded stenographically or by other means permitted by these Rules and shall be sufficient if they state the controlling factual and legal grounds of decision.

(emphasis added)

¹⁰ The Commission observes, as noted *supra* at n.7, that both LTB cases were brought against Aedile, LLC, alleging that it failed to pay the rent due on a commercial lease and that it held over after the expiration of a commercial lease. Accordingly, it is not readily apparent from the Commission’s review of the record that any Superior Court judge made findings of fact and conclusions of law on whether Mr. Watkins, in his individual capacity, had a landlord-tenant relationship, either residential or commercial, with the Housing Provider or as a subtenant of Aedile, LLC, either by a separate lease or as a matter of law. *See Corsetti Trust*, RH-TP-06-28,207 at 27-31 & n. 17 (finding substantial evidence to support conclusion that payment and acceptance of rent created a residential tenancy); *cf. City Wide Learning Ctr., Inc. v. William C. Smith & Co.*, 488 A.2d 1310, 1313 (D.C. 1985) (discussing sufficiency of evidence regarding whether “by subsequent acceptance of rent” lease of premises had been converted from commercial to residential).

¹¹ D.C. OFFICIAL CODE § 2-509(b) provides, in relevant part, as follows:

70% Voluntary Agreement 548 7th St., S.E., VA 08,004 (RHC Dec. 27, 2012) at n.9 (explaining that where the trier of fact takes official notice, she must give the parties notice in writing of the documents officially noticed, the facts relied upon from the documents, and an opportunity to contest the facts). Although the ALJ did make findings of fact as to the ultimate outcome for each LTB action, the Commission’s review of DCCA precedent shows that mere reference to the results of action ignores the true spirit of the fundamental responsibility placed on the trier of fact of ensuring that all foundational requirements of collateral estoppel have been met.

Goldkind, 467 A.2d at 473; Modiri, 904 A.2d at 395.

Accordingly, because the Commission cannot conclude that the ALJ correctly applied the elements of collateral estoppel to the facts of this case,¹² the Commission determines that there is not substantial evidence in the record on appeal to support the ALJ’s determination that Mr. Watkins is a commercial tenant and that, as such, OAH lacks jurisdiction over the Tenant Petition. 14 DCMR § 3807.1; *see* Final Order at 3-4; R.at Tab 30.

III. CONCLUSION

For the foregoing reasons, the Commission vacates the Final Order, and remands this matter to OAH for further action consistent with this Decision and Order. On remand, the ALJ,

“Where any decision of ... any agency in a contested case rests on official notice of a material fact not appearing in the evidence in the record, any party to such case shall on timely request be afforded an opportunity to show the contrary.”

¹² *See e.g.* Goldkind, 467 A.2d at 473; Rosenboro, TPs 3,991 & 4,673; *see also* Moore v. Moore, 391 A.2d 762, 770 (D.C. 1978) (rules “require detailed, written findings of fact and separate conclusions of law upon all matters” (citations omitted)). Super. Ct. Civ. R. 52(a), *supra* at n.9, is incorporated into the rules of the LTB by Super. Ct. L&T R. 2, which provides:

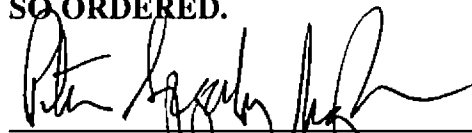
Applicability of certain Superior Court Rules of Civil Procedure.

The following Superior Court Rules of Civil Procedure are applicable to proceedings in the Landlord and Tenant Branch of the Court, except where inconsistent with the provisions of the Landlord and Tenant Rules or the summary nature of proceedings in this Branch:

Rules . . . 52 . . . Any Civil Rule not listed herein shall not apply to any case filed in this Branch of the Court.

in her discretion, may permit the Housing Provider to supplement the record and renew the Motion for Summary Judgment with further evidence of any findings of facts and conclusions of law made by in the LTB of the Superior Court that would support the application of collateral estoppel to Mr. Watkins' claims in the Tenant Petition. If the ALJ determines that the jurisdictional question of the nature of Mr. Watkins' tenancy cannot be resolved by collateral estoppel, the ALJ is instructed to hold an evidentiary hearing on the issues raised in the Tenant Petition in accordance with the provisions of the Act and the DCAPA. The Commission further notes that in light of the Commission's remand of this issue to OAH, the Commission does not at this time address the merits of whether Mr. Watkin's tenancy was commercial or residential, and the ALJ, accordingly, may make findings of fact and conclusions of law on the issue based on evidence in the record following a hearing, if necessary.

SO ORDERED.



PETER B. STEGEDY-MASZAK, CHAIRMAN



DIANA HARRIS EPPS, COMMISSIONER



MICHAEL T. SPENCER, 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 (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:

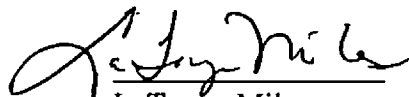
D.C. Court of Appeals
Office of the Clerk
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **DECISION AND ORDER** in RH-TP-13-30,371 was mailed, postage prepaid, by first class U.S. mail on this **28th day of July, 2017**, to:

Byron Watkins
P.O. Box 15813
Washington, DC 20003

Carol S. Blumenthal
Blumenthal & Cordone, PLLC
7325 Georgia Ave., N.W.
Washington, DC 20012



LaTonya Miles
Clerk of Court
(202) 442-8949