

CITY OF TAKOMA PARK  
COMMISSION ON LANDLORD-TENANT AFFAIRS

Queveta Payton  
8500 New Hampshire Ave., # 312  
Silver Spring, MD 20903  
Tenant

v.

Reden Management  
11912 Maple Ave.  
Rockville, MD 20852  
Landlord

COLTA Case No. 07-07T

**OPINION AND ORDER**

**I. INTRODUCTION.**

On February 5, 2007, Queveta Payton (“Tenant”), a former tenant of 8314 Roanoke Ave., #1, Takoma Park, Maryland (“Apartment”), filed a Complaint with the City of Takoma Park Commission on Landlord-Tenant Affairs (hereinafter referred to as “COLTA” or “Commission”) against Reden Management (“Landlord”), the Property owner’s agent. This Complaint was docketed as Case No. 07-07T.

The Tenant’s Complaint alleged that the Landlord wrongfully withheld her security deposit and sought a refund of her security deposit plus accrued interest. The Tenant amended her Complaint on February 22, 2007, to request treble damages.

The Commission has jurisdiction over this matter pursuant to Section 6.24.020 of the *Takoma Park Code*. In accordance with Section 6.24.080 of the *Takoma Park Code*, the Commission held a public hearing on March 13, 2007. The Tenant was present at the hearing. The Tenant, as the party filing the Complaint, has the burden of proof by a preponderance of the evidence. § 6.24.080 (J). No one attended the hearing on behalf of the Landlord. The Landlord stated in a February 12, 2007, letter to City of Takoma Park Landlord-Tenant Coordinator Moses Wilds that it had filed a complaint regarding this matter in the District Court of Maryland and would not be attending the hearing. Exhibit 5.

## **II. APPLICABLE LAW.**

Section 8-203 of the Real Property Article of the *Annotated Code of Maryland*, which is incorporated by reference in section 6.16.120 of the *Takoma Park Code*, governs security deposits under residential leases. Section 8-203(f) authorizes the withholding of a security deposit for unpaid rent, damage due to breach of lease, and physical damage caused by the tenant in excess of ordinary wear and tear. Section 8-203(g) requires a landlord who withholds any portion of the security deposit to provide to the tenant, within 45 days of the termination of the tenancy, a “written list of damages claimed . . . together with a statement of the cost actually incurred.” Security deposits accrue simple interest in six-month intervals at a rate of 3% per annum. *Md. Code Ann.*, Real Prop. Art., §8-203(e).

## **III. EVIDENTIARY AND HEARING SUMMARY.**

The Tenant entered into a one-year lease for the Apartment commencing on January 1, 2005. Exhibit 4. The Tenant paid a security deposit of \$647.00. Exhibit 3.

On September 1, 2006, the Tenant verbally notified the Landlord that she intended to vacate the Apartment on September 30, 2006. Exhibit 3. The Landlord’s bookkeeper told her that she did not have a balance on her account and requested that she provide a written notice of her intent to vacate.

She gave the Landlord written notice of her intent to vacate the Apartment on or about September 6, 2006. See 9/12/06 letter from the Landlord to the Tenant included in Exhibit 3. The Landlord advised the Tenant that her move out date would be October 30, 2006,<sup>1</sup> but invited the Tenant to find a qualified tenant to rent her unit during the month of October. Id. The Landlord stated, “We have enjoyed working with you and you are pre approved, if you should ever want to re-rent this, or a larger apartment in the future.”

The Tenant found a new tenant, Alberto Louamba, to rent the Apartment starting in October 2006. The Tenant moved out of the Apartment on September 30, 2006. The Tenant and Mr. Louamba met with the Landlord’s maintenance man, Mr. Yancy, on October 1, and Mr. Yancy found the Apartment to be clean. Mr. Yancy gave the Tenant a rental application and advised her that Mr. Louamba had to complete an application and execute a lease by the end of October. Mr. Louamba gave the Tenant a money order for \$665.12, for October rent for the Apartment, which the Tenant mailed to the Landlord. The Tenant gave Mr. Louamba the keys to the Apartment and the mailbox. The Tenant asserted that the Landlord knew that Mr. Louamba would be living in the Apartment in October.

On October 10, 2006, the Landlord posted a note on the Apartment door stating that the locks would be changed. Mr. Louamba notified the Tenant, and she called the Landlord and left a voice mail message. On October 20, 2006, the Landlord changed the locks at the Apartment, and Mr. Louamba called the Tenant and told her he was locked out. The Tenant called the Landlord, and the Landlord accused her of illegally subleasing the Apartment. The Tenant, the Landlord, and Mr. Louamba met at the Landlord’s Office that evening. The Landlord told Mr. Louamba that his October rent was paid,

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<sup>1</sup> Presumably, the Landlord intended to say October 31, 2006.

but that he had to pay \$800.00 for November rent and an \$800.00 security deposit. Mr. Louamba and the Landlord signed a one year lease that day. Exhibit 6.

The Tenant submitted two letters from the Landlord that she said she did not receive until January 12, 2007. One of the letters was dated October 10, 2006, and stated that she had not contacted them to schedule a move out inspection, that she had not returned the keys to the Apartment, that no one other than her was allowed to enter the Apartment, and that she had left trash and furniture outside the Apartment, which it had to haul away. The letter stated that the Landlord would change the locks on Friday, October 18, 2006,<sup>2</sup> and that she would have to pay for the locks if she did not respond before that date. The other letter was undated. It alleged that the Landlord was unaware that Mr. Louamba had moved into the Apartment, that it had agreed to rent the Apartment to someone else starting in November and that the person had already paid a deposit, that the Tenant had tried to pretend that she still lived in the Apartment instead of Mr. Louamba, that she had unpaid late fees and utility charges, that she owed money for the cost of changing the locks and having her trash hauled away, and that Mr. Louamba had a receipt showing that he had paid the Tenant for October rent and a lease requiring him to pay the Tenant higher rent than the Tenant paid the Landlord. The Landlord concluded that Mr. Louamba had reimbursed the Tenant for her security deposit. The Landlord stated that Mr. Louamba intended to move out of the Apartment at the end of January and that it was reserving the right to inspect the Apartment in February, when it would be vacant. The Landlord also sent the Tenant a record of a \$300.00 check to James Hall Hauling Service dated October 12, 2006.

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<sup>2</sup> The Commission notes that October 18, 2006, was a Wednesday.

The Tenant denied leaving anything outside of the Apartment, denied charging Mr. Louamba more than her monthly rent for October 2006, and asserted that she sent Mr. Louamba's cashier's check for October rent to the Landlord on time.

#### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

1. The Commission finds that the Tenant entered into one year tenancy commencing on January 1, 2005. The Commission finds that the tenancy converted to a month-to-month tenancy by operation of law on January 1, 2006.

2. The Commission finds that the Tenant paid a security deposit of \$647.00 on or about December 19, 2004.

3. The Commission finds that the Tenant vacated the Property on September 30, 2006, and her tenancy terminated on October 31, 2006.

4. The Commission finds that the Tenant's \$647.00 security deposit accrued interest from December 19, 2004, through the present. This period includes four six-month periods, during which the deposit earned simple interest at the statutory rate of 3% per annum, amounting to \$38.82.

5. The Commission finds that the Landlord did not comply with Section 8-203(g) of the Real Property Article of the *Maryland Code*, which required that it send to the last known address of the tenant, within 45 days of the termination of the tenancy, a "written list of damages claimed . . . together with a statement of the cost actually incurred." The Landlord's only specific allegation of a cost actually incurred is the \$300.00 hauling charge. However, the Tenant testified that she did not receive notice of the hauling charge or the check printout regarding the hauling charge until January 2007. Although the Landlord's undated letter states that it had previously sent the "invoice" to the Tenant, the Commission notes that even if the Landlord had previously sent the Tenant the October 10, 2006, letter, which the Tenant denies, the check printout was dated October 12, 2006, and there is no

evidence of any additional correspondence from the Landlord to the Tenant from October 10, 2006, until January 10, 2007. Therefore, the Commission finds that the Landlord did not provide the Tenant with written notice of any damages or costs actually incurred within 45 days of the end of the Tenancy.

Because the Landlord failed timely to provide the Tenant with a written list of damages claimed and a statement of the cost actually incurred, the Commission holds that the Landlord forfeited its right to withhold any portion of the Tenant's security deposit.

The Commission notes that the Maryland security deposit law bestows a benefit upon landlords by enabling them to collect damages from tenants without the expense or inconvenience of first proving the damages in court. However, to take advantage of this benefit, the landlord must comply with the law's notice requirements, which protects tenants from abusive withholding of their security deposits.

6. The Commission finds that the Landlord did not have a reasonable basis to withhold any portion of the Tenant's security deposit because the Landlord's own letters demonstrate that it did not suffer any loss of rent or other damages as a result of the Tenant's early termination (by one month) of the lease, as it concedes in its correspondence that it received rent from Mr. Louamba for October 2006, and that Mr. Louamba entered into a lease for the Apartment and remained there through January 2007.

The Landlord's assertion that Mr. Louamba reimbursed the Tenant for her security deposit is inconsistent with both the Landlord's and the Tenant's version of the facts, and unsupported by any documentary evidence. Moreover, even assuming that Mr. Louamba had paid the Tenant an amount equal to her security deposit, the Commission does not understand, and the Landlord does not explain, why that would absolve the Landlord of its legal duty to reimburse the Tenant's security deposit.

In addition, the Commission finds the Tenants assertion that the Landlord, through its agent, Mr. Yancy, knew that Mr. Louamba was living in the Apartment and consented to the arrangement to be credible. First, the Landlord invited the Tenant to locate a replacement Tenant so that she could

avoid paying November rent. Second, Mr. Louamba paid the November rent via a cashiers check. Third, the Landlord offered Mr. Louamba a one-year lease for the Apartment on October 20, 2006, at approximately 9:00 p.m., which corroborates the Tenant's assertion that Mr. Yancy had given her an application form for Mr. Louamba, and indicates to the Commission that one of the Landlord's agents had already received and approved Mr. Louamba's application.

The Commission finds that the Landlord's untimely assertion that it suffered unspecified damage as a result of having promised the Apartment to a new Tenant is not the fault of the Tenant and is not "damage due to breach of lease" that a landlord may deduct from a security deposit under section 8-203(f). If the Landlord believed that Mr. Louamba was an illegal subtenant, it should not have entered into a lease with him and allowed him to reenter the Apartment on October 20, 2006.

The Commission does not find the Landlord's assertion, in its undated letter sent to the Tenant in January, that the Tenant owed unpaid late fees and utility fees, to be credible. First, the Tenant testified that the Landlord's bookkeeper had notified her that she did not owe any money when she gave notice of her intent to vacate. Second, the Landlord did not provide any records indicating that the Tenant had unpaid fees. Third, the Landlord's September 12, 2006, letter notified the Tenant that she was pre approved to rent another apartment in the future and did not mention unpaid fees. Finally, the Tenant stated that the Landlord provided a positive reference to her new landlord.

Therefore, the Commission finds that the landlord withheld the Tenant's entire security deposit without reasonable basis and that award of punitive damages is appropriate in this case. The Commission awards the Tenant two times the amount of the security deposit unreasonably withheld \$1,371.64 ((2 x \$647.00) + (2 x \$38.82)) as punitive damages.

## **VI. ORDER.**

It is this 12<sup>th</sup> day of April 2007, by the City of Takoma Park Commission on Landlord-Tenant Affairs, ORDERED,

1. That the Landlord shall pay to the Tenant \$2,057.46, which amount includes \$685.82 for reimbursement of the Tenant's security deposit and accrued interest wrongfully withheld, and \$1,371.64 in punitive damages.

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David Lurie,  
Presiding Commissioner

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Joanne Hill, Commissioner

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Juan Jose Canales, Commissioner

**Notice of Appeal Rights**

Any party aggrieved by a final Opinion and Order of the Commission on Landlord-Tenant Affairs may appeal to the Circuit Court of Montgomery County, Maryland, under the Court rules governing judicial review of administrative decisions within thirty (30) calendar days from the date of the final Opinion and Order. The filing of a petition for judicial review will not stay a final Opinion and Order unless so ordered by a court of competent jurisdiction.

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