

CITY OF TAKOMA PARK
COMMISSION ON LANDLORD-TENANT AFFAIRS

Elizabeth Kaufman
1441 Spring Vale Ave.
McLean, VA 22101
Tenant

v.

Lawrence Silberman
14118 Old Columbia Pike
Burtonsville, MD 20866
Landlord

COLTA Case No. 07-39T

OPINION AND ORDER

I. INTRODUCTION.

On July 9, 2007, Elizabeth Kaufman (“Tenant”), a former tenant of the single family home at 514 Tulip Avenue, Takoma Park, Maryland (“Property”), filed a Complaint with the City of Takoma Park Commission on Landlord-Tenant Affairs (hereinafter referred to as “COLTA” or “Commission”) against Lawrence Silberman (“Landlord”), the owner of the Property. This Complaint was docketed as Case No. 07-39T.

The Tenant’s Complaint alleged that the Landlord wrongfully withheld her security deposit and sought a refund of her security deposit and punitive 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 September 11, 2007. The Tenant and Landlord were 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).

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). If the Landlord withholds any part of the security deposit without a reasonable basis, the Commission may award the Tenant up to three times the amount improperly withheld. *Md. Code Ann.*, Real Prop. Art., §8-203(e)(4).

III. EVIDENTIARY AND HEARING SUMMARY.

The Tenant entered into a one-year lease for the Property commencing on July 1, 2005. Exhibit 4. The Tenant’s lease indicated that she paid a security deposit of \$2,750.00, which included a \$350.00 pet security deposit. Exhibit 4. The Tenant’s Complaint asserted that she paid a \$250.00 cleaning fee, which was noted as a “Tenant Financial Obligation Prior to Occupancy” on the rental application completed by her father, who cosigned the lease. Exhibit 3. The Tenant moved out of the Property on April 30, 2007, and the Landlord inspected the Property with the Tenant on May 1, 2007.

In a letter received by the Tenant on June 15, 2007, the Landlord notified the Tenant of alleged damage to the Property incurred during her tenancy, the cost of which exceeded the Tenant's security deposit. Exhibit 6. The Landlord provided the following itemization of credits, damages, and deductions:

\$2,400	security deposit
+ 350	pet fee deposit
+ 165	interest
- 29	light bulbs
- 80	May 1 rent
- 500	ceiling damage
- 125	chandelier repair
- 1,375	flood damage
<u>- 2,400</u>	<u>February, March, and April 2006 rent</u>
-1,594	Balance due to Tenant

Exhibit 6.

The Tenant expressed her disagreement with several of the Landlord's deductions from her security deposit in her Complaint. Exhibit 3.

Regarding the light bulbs, the Tenant asserted that she left several packages of light bulbs at the Property when she moved out, that several light bulbs were burned out when she moved in, and that the Landlord did not instruct her that she had to replace the light bulbs when she moved out. The burned out light bulbs were noted in the move-out inspection report. Exhibit 3. The Tenant admitted that she did not notify the Landlord of any missing light bulbs when she moved into the Property. The Landlord submitted a receipt for several light bulbs dated May 6, 2007. Exhibit 7.

Regarding the move out date, the Tenant asserted that she vacated the Apartment on April 30, 2007, and that the Landlord scheduled the move out inspection for May 1, 2007, and did not tell her that she would have to pay rent for that day.

The \$500.00 in damage to the ceiling asserted by the Landlord was caused by water leaking from the radiator in a vacant upstairs bedroom, which began after the Tenant shut the valve to reduce her heating costs. The Tenant asserted that she discovered the leak on February 21, 2007, and immediately called the Landlord. The Tenant alleged that the ceiling damage claimed by the Landlord was attributable to defective a radiator valve. The Landlord alleged that the Tenant failed timely to notify him of the leak. The leak damaged the paint and drywall. The Landlord testified that he is a professional drywall repairman, that he charges \$50.00 per hour, and that it took him 10 hours to repair the damage. The Tenant asserted that the damage was minor and she estimated that the Landlord only spent four hours on the repairs.

Regarding the chandelier in the hallway, the Tenant admitted noticing some damage to the chandelier, which she said may have occurred during move-out. She asserted that the damage appeared to be minor and that the damage shown in the Landlord's photograph appeared to be greater than was shown in her photograph, which she took when she moved out. Exhibits 10 and 12. The Landlord submitted a purported receipt for the repair of the chandelier, which he conceded he had written himself. Exhibit 9.

The other item of water damage asserted by the Landlord occurred in fall 2005, after the Tenant complained that the heat in the Property was not working. She testified that the Landlord first told her to bleed the valves in the radiators and that she and her house mate bled all the radiators in the house. She testified that the valves hissed and a few drops of water came out when they bled the valves. The Landlord came to the house several days later and pulled some levers in the basement. The Tenant testified that she then went around to all the radiators with the Landlord and they discovered that water was leaking from them. She alleged that the Landlord closed each valve and then bled each radiator. The Tenant testified that neither she nor the Landlord checked or bled the valve in Ms. Grant's room

that day. The Tenant testified that she heard water running through the walls later that day and immediately called the Landlord. The valve in Ms. Grant's room had been open, and water leaked from her room radiator into the walls and ceilings of several other rooms. The Landlord testified that he had not pressurized the heating system that day or bled the radiators because he was not able to get into Ms. Grant's room. He testified that he merely adjusted a lever in the basement to balance the heating system and force heat to the front of the house. The Tenant testified that the Landlord had often charged her for damages during her Tenancy, but that he never attempted to charge her for the damage resulting from the water leak.

The Landlord sought \$2,400.00 for unpaid rent for February, March, and April 2006. The Tenant asserted that the Landlord had agreed to reduce the rent for February and March 2006 by \$800.00 per month while she looked for a new house mate to replace Ms. Grant, who was not paying her share of the rent. The Tenant asserted that the Landlord then agreed to reduce the March 2006 rent by \$800.00 because he did not like the person whom the Tenant had found to take Ms. Grant's room. The Tenant noted that the Landlord had sued Ms. Grant almost immediately after she failed to pay her December 2005 rent, Exhibit 8, but that he had not sued her for the rent that she allegedly failed to pay.

The Tenant testified that, soon after the termination of her tenancy, the Landlord began leaving harassing phone messages accusing her of stealing \$600.00 worth of brass doorknobs from the Property and threatening to withhold that amount from her security deposit. The Landlord did not include the doorknobs in the written list of damages that he provided to the Tenant.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

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

2. The Commission finds, based on the lease, that the Tenant paid a security deposit of \$2,750.00 on or about July 1, 2005. The Commission finds that the Tenant did not prove that she paid the \$250.00 cleaning fee in addition to the security deposit and pet security deposit identified in the lease. The Commission notes that the completion of the rental application did not bind the Tenant or her father to pay any amount other than the application fee and that the \$350.00 pet security deposit was not listed as an initial obligation of the Tenant on the application.

3. The Commission finds that the Tenant vacated the Property on April 30, 2007.

4. The Commission finds that the Tenant's \$2,750.00 security deposit accrued interest from July 1, 2005, through April 30, 2007. This period included 3 six-month periods during which it accrued simple interest at the statutory rate of 3% per annum, amounting to \$123.75.

5. The Commission finds that the Landlord complied with Section 8-203(g) of the Real Property Article of the *Maryland Code*, which required that he 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."

6. The Commission finds that the Landlord properly withheld \$27.00 for the replacement of light bulbs. The Tenant did not deny the Landlord's assertion that the light bulbs were burned out, and, if there were burned out light bulbs at the time she moved in, she should have addressed that issue with the Landlord at that time.

7. The Commission finds that the Landlord was not entitled to deduct \$80.00 for rent for May 1, 2007, from the Tenant's security deposit. The Commission finds the Tenant's testimony that

she vacated the house on April 30, 2007, to be credible. The Landlord's decision to schedule the inspection for May 1, 2007, does not render the Tenant responsible for another day's rent.

8. The Commission finds that the Landlord was entitled to deduct \$500.00 from the Tenant's security deposit for the damage caused by the water leak in February 2007. The Commission finds that the Tenant, knowing of the damage caused by the previous water leak, should not have attempted to adjust the radiator valves without the Landlord or a professional plumber present. Once she had adjusted the radiator valve, she should have monitored it to make sure it was not leaking. The Commission finds the Landlord's testimony that he spent 10 hours on the repair to be credible.

9. The Commission finds that the Landlord was not entitled to deduct \$125.00 for the repair of the ceiling chandelier. Based on the photographs of the chandelier and the fact that the Landlord wrote the repair receipt, the Commission does not find the assertion that the Landlord incurred a \$125.00 expense to repair the light to be credible.

10. The Commission finds that the Landlord was not entitled to deduct \$1,375.00 for repairing the water damage from the radiator leak in 2005. The Commission finds, based on the testimony of the Tenant, that the Landlord pressurized the heating system and bled the radiators on the day the leak occurred. The Commission finds that the Landlord should not have pressurized the system without ensuring that all the radiator valves were closed, and should have immediately checked the valve in Ms. Grant's room after discovering that several of the radiators were open. The Commission further finds that the Landlord should not have instructed the Tenant to bleed the radiator valves on her own. Finally, the Commission notes that the Landlord's failure to demand payment for the damages at the time the damages occurred, or at the expiration of the Tenant's initial lease term in June 2006, indicates that the Landlord did not believe the Tenant was responsible for the damage.

11. The Commission finds that the Landlord was not entitled to withhold \$2,400.00 in back rent for February, March, and April 2006, from the Tenant's security deposit. The Commission finds the Tenant's testimony that the Landlord agreed to waive \$800.00 of rent for each of those months to be credible. The fact that the Landlord did not sue the Tenant for that rent at the time it went unpaid, as he did in the case of Ms. Grant for the months of December 2005 and January 2006, and the fact that the Landlord did not otherwise notify the Tenant that she owed back rent prior to the termination of her tenancy, support the Tenant's assertion. Moreover, the Landlord's claim that the Tenant owed \$2,400.00 in back rent and \$1,375.00 in damages from incidents occurring more than one year prior to the termination of the tenancy and his accusations that the Tenant stole \$600.00 worth of doorknobs indicate to the Commission that the Landlord was attempting to intimidate the Tenant to prevent her from seeking the return of her security deposit.

12. The Commission finds that the award of punitive damages is inappropriate in this case because the Landlord complied with the written notice requirements of the *Code* and because the damages withheld, although subject to dispute as to the amount or the Tenant's responsibility, did not appear to be fabricated.

13. Based on the foregoing findings and conclusions, the Commission holds that the proper accounting of the Tenant's security deposit is as follows:

Security deposit paid by Tenant	\$2,750.00
Accrued interest from July 1, 2005, to April 30, 2007	123.75
Replacement of light bulbs	(27.00)
Repair of damages caused by Feb. 2007 leak	<u>(\$500.00)</u>
Security deposit refund to Tenant	\$2,346.75

V. ORDER.

It is this 9th day of October 2007, by the City of Takoma Park Commission on Landlord-Tenant Affairs, ORDERED, that the relief requested by the Tenant, Elizabeth Kaufman, is GRANTED in part and DENIED in part; and

ORDERED that the Landlord, Lawrence Silberman, shall pay to the Tenant \$2,346.75 as a refund of the Tenant's security deposit within 30 days of the date of this Order.

Jarrett Smith,
Presiding Commissioner

Dorothy Clennon, Commissioner

Enoch Bevel, 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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ORDER

Upon consideration of the Landlord's request for consideration received October 19, 2007, it is this 29th day of October 2007, by the City of Takoma Park, Commission on Landlord-Tenant Affairs, ORDERED that the Landlord's request is DENIED.

FOR THE COMMISSION

Jarrett Smith,
Presiding Commissioner

Copies to:
Lawrence Silberman
Elizabeth Kaufman

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