

CITY OF TAKOMA PARK, MARYLAND
COMMISSION ON LANDLORD-TENANT AFFAIRS

James Bradford and Ana Corado
420 Lincoln Avenue
Takoma Park, MD 20912

Tenant

v.

Sophia Parkes
1368 Sheridan Street, NW
Washington, DC 20011

Landlord

COLTA Case No. 07-19T

OPINION AND ORDER

I. INTRODUCTION.

On April 17, 2007, James Bradford and Ana Corado (“Tenants”), former tenants at 7611 Maple Avenue, Condominium Unit 708, Takoma Park, Maryland, filed a Complaint with the City of Takoma Park, Commission on Landlord-Tenant Affairs (“Commission”) against Sophia Parkes (“Landlord”), the owner of Condominium Unit 708 (“Unit” or “Property”). See Exhibit 3. The Tenants’ Complaint alleged various defects in the condition of the Unit that violated the Property Maintenance Code¹ and,

¹ The City of Takoma Park has adopted Chapter 26, Housing and Building Maintenance Standards, of the *Montgomery County Code* as the City’s Property Maintenance Code. See *Takoma Park Code* §6.12.020. The City contracts with the Montgomery County Department of Housing and Community Affairs to enforce the Property Maintenance Code and to perform rental licensing and complaint inspections for the City.

as relief, requested a rent rebate of 40% beginning with the lease date of January 7, 2007. The Tenants later amended their Complaint to allege the following additional violations and request that the Commission find that the lease agreement for the Unit void because of the violations: (1) the Landlord rented the Unit without a rental housing license issued by the City and the licensing inspection of the Unit revealed seven housing code violations; (2) the Landlord violated their privacy rights by allowing a “stranger” to open the unit door in order to provide access to the Property to an electrician to make repairs; and (3) the Landlord attempted to charge the Tenants a 10% late fee for their June 2007, rent which is in excess of the late fee allowed by law. *See* Exhibit 8. The Landlord, through counsel, filed a response to the Complaint on July 31, 2007, denying liability. *See* Exhibit 9.

The Commission has jurisdiction over these matters pursuant to Section 6.24.020 of the *Takoma Park Code* (unless otherwise specifically stated, all statutory references are to the *Takoma Park Code*). In accordance with Section 6.24.080, the Commission held a public hearing on August 21, 2007. The Tenants were present at the hearing. The Landlord was present and represented by Michael S. Krotman, Esquire. The Tenants, as the party filing the Complaint, have the burden of proof by a preponderance of the evidence. § 6.24.080.J.

II. APPLICABLE LAW.

The *Takoma Park Code* defines a defective tenancy as “any condition in a rental facility that constitutes a violation of the terms of the lease, the Landlord-Tenant Relations Law, or the Property Maintenance Code.” § 6.04.030. A complaint of a defective tenancy may be filed with COLTA if a tenant has given the landlord written notice of the defect and the landlord has not rectified the defect or made good faith efforts to do so within one week after notice was given. § 6.16.170.A. If the tenant can show that the landlord had actual notice of the defect, then the tenant does not need to have provided written notice of the defective tenancy to the landlord. *Id.* When COLTA finds that a landlord has

caused a defective tenancy, then COLTA is empowered to award the tenant his or her actual monetary damages sustained as a result of the defective tenancy. § 6.24.090.B.1.a.i.

III. EVIDENTIARY SUMMARY.

The Tenants entered into a one year lease of the Unit beginning on January 7, 2007, and ending on January 31, 2008, for a monthly rent of \$1,700.00. *See* Exhibit 4. The Tenants allege that the Landlord knowingly rented the Unit without having secured a rental housing license from the City. The Landlord did not dispute that a rental license had not been issued as of the lease commencement date, but contends that she timely applied for a rental license on October 6, 2006, (*see* 2006 Rental License Application, attached as part of Exhibit 4). The County housing code inspector first scheduled a licensing inspection of the Unit for Thanksgiving Day, November 23, 2006, and this licensing inspection was not rescheduled until February 15, 2007. At that time, the Unit was inspected by J. Kwami Edusei, a housing code inspector with the Montgomery County Department of Housing and Community Affairs (DHCA). The Landlord and Tenant James Bradford were present for this housing code inspection. According to the Landlord,² following the inspection, Mr. Edusei told the parties, that there were no housing code violations in the Unit.

The Unit was reinspected by a DHCA housing code inspector on March 20, 2007, apparently because DHCA's review of the file for the Unit did not contain a report of the results of the February 15th inspection by Mr. Edusei. Because the notice of the inspection was sent to the property address, rather than to the Landlord's address, only Tenant James Bradford was present when the Unit was inspected

² At the hearing, the Tenants did not dispute the Landlord's statement that Mr. Edusei did not find any housing code violations at the February 15th inspection, but they complained that Mr. Edusei did not identify himself to the Tenants as a DHCA housing code inspector. However, Mr. Bradford, who was present for this inspection, did admit that Mr. Edusei wore a shirt that had a Montgomery County seal and stated Code Enforcement on it.

on March 20, 2007, by DHCA housing code inspector Robert Goff. The March 20, 2007, inspection report (Exhibit 5) found eight violations, including a drip or leak in the bathroom sink, a loose light fixture in a closet, missing piece of floor trim in the dining room, holes behind the dishwasher and refrigerator that needed to be patched, GFI outlets in the kitchen that needed replacement, an entry door that needed to self-close and self-latch, and roach and rodent infestation. The Landlord testified that she received a copy of the inspection report on April 25, 2007, and that Mr. Goff conducted a reinspection of the Unit on May 21, 2007, to determine whether or not the violations previously found had been corrected. An e-mail from Mr. Goff to Marjorie Ciccone, in the City's code enforcement office, confirmed that all violations had been corrected by the time of the May 21, 2007, reinspection of the Unit and a rental license then was issued by the City on May 22, 2007. *See Exhibits 5A and 10.*

Roaches and mice in the Unit. The Tenants testified to continuing problems with mice and roaches during their tenancy. The Tenants first reported roaches in the Unit to the Landlord on January 12, 2007, and mice were reported to the Landlord on February 19, 2007. According to the Landlord, treatment of the Unit for both roaches and mice was performed on January 29, 2007, and on February 24, 2007, by McKenley's Pest Control. *See Exhibit 6, Attachment 5.* Following the second extermination, the pest control company reported that it had found "no evidence of infestation of general pests or mice." *See Exhibit 6, Attachment 6.* Roach and rodent infestation was noted on the County inspection report for the Unit, a condition apparently brought to the inspector's attention by the Tenant. *See Exhibit 5.* According to the Landlord, the condominium association regularly treats for pest control and, on or about April 6, 2007, the Unit apparently received extermination services from the pest control company under contract to the condominium association. A hole behind the refrigerator also was sealed on or about May 3, 2007, in order to prevent access by vermin.

Bathroom faucet leak. A drip in the bathroom sink faucet was noted by the condominium

association manager Shannon Rodes as part of a building-wide inspection on or about January 30, 2007, who subsequently notified the Landlord of the leak. A plumber apparently attempted to fix the sink leak on or about February 7, 2007, but the repair required shutting off the water to the entire building which could not be immediately scheduled. According to the Landlord, the plumber returned on March 22, 2007, and completed the sink faucet leak repair on April 25, 2007.

Other violations. The DHCA inspection report, dated March 20, 2007, and received by the Landlord on or about April 25, 2007, notes that a light fixture in a closet needed to be secured, that there was a missing section of floor trim in the dining room hallway, and that the entry door did not self-close and self-latch. According to the testimony, documents, and correspondence in the record, all of these repairs were made by the Landlord.

Noise. The Tenant's initial complaint includes allegations that they were disturbed by excessive noise from the apartment above the unit. No evidence regarding noise was presented at the hearing and the noise issue has not been considered by the Commission.

Violation of privacy/entrance into the apartment by a "stranger". The Tenants reported a problem with a light fixture or switch in the bathroom and, in response, the Landlord arranged for an electrician to examine the bathroom light switch and make any necessary repairs. The Landlord testified that she was not able to be at the Property on May 17, 2007, to give the electrician access to the Unit and asked a neighbor to open the Tenant's door for the electrician. Tenant Bradford responded that he was actually in the Unit at the time the electrician arrived, but that the "unknown person" who unlocked the door for the electrician did not give him sufficient time between knocking on the door and then proceeding to unlock the door for him to answer the door.

Tenants' Purchase of House. On April 29, 2007, the Tenants signed a sales contract to purchase a house at 420 Lincoln Avenue, Takoma Park, MD 20912, and on June 25, 2007, the Tenants went to

settlement on their purchase of this house. *See* Exhibit 12 (Regional Sales Contract) and Exhibit 9 (Deed). The Tenants testified that they had become “fed up” with the problems in the Unit and, therefore, began searching for a house to purchase. The Tenants denied that they had intended to break their lease with the Landlord before they signed a sales contract and denied that their complaints about code violations were a pretext to vacate the Unit before the end of their lease term in order to move into their newly-purchased house.

Late Fee on June Rent. The Tenants gave notice to the Landlord, by letter dated May 17, 2007, and delivered to the Landlord on or about May 21, 2007, that they would be vacating the Unit on June 30, 2007, citing the Landlord’s material breaches of the lease agreement as reasons for ending the lease and moving out prior to the January 31, 2008, lease termination date. *See* Exhibits 8 and 11 (Notice to Vacate, dated May 17, 2007). The Tenants claimed that they had placed June’s rent, plus a 5% late fee, in a bank account, which they would release to the Landlord once she accepted the early lease termination and gave them instructions on how to return the keys and scheduled a move-out inspection of the Unit. Since the Landlord had not received rent for June 2007, she sent an e-mail to the Tenants on June 8, 2007, stating that a \$50.00 late fee from the Tenants was due and that if rent was not received by June 10th, then the Tenants would be assessed a 10% fine. *See* Exhibit 8 (June rent - late charge). The lease for the Unit, in #3, provides for a late fee of \$50.00 if rent is not paid within 5 days from the due date, *i.e.*, the 1st day of the month. *See* Exhibit 4. However, Section 6.16.090 (late fees) provides that a late fee may not be charged if rent is received within 10 days of the rent due date and that the late fee may not exceed 5% of the rent due for the rental period.

The evidence at the hearing was that the Tenants never paid rent or any late charge to the Landlord for June 2007, or for any subsequent months of the lease term. By letter dated July 5, 2007, the Landlord’s attorney notified the Tenants that their security deposit, and accrued interest, had been

applied towards June's unpaid rent and \$50.00 late charge and that rent for July 2007 also was due and owing. *See* Exhibit 9 (letter dated July 5, 2007). Any claim by the Landlord for unpaid rent from the Tenants is beyond the scope of this proceeding and would need to be pursued in District Court.

The Tenants had moved out of the Unit and into the house they had purchased at 420 Lincoln Avenue, Takoma Park, Maryland, by June 30, 2007.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1. The Commission finds that the Landlord rented the Unit after applying for a rental housing license, but before being issued a rental housing license by the City. The Commission does not condone the rental of the unit without the proper rental housing license, but holds that the *Takoma Park Code* only authorizes the City, as the licensing authority, to prosecute violations of the licensing requirement. The Landlord's failure to have a rental license at the commencement of the tenancy is neither a breach of the Tenants' lease, nor a defective tenancy, and does not entitle the Tenants to a rebate of rent paid or to void the lease.

2. The Commission does not find a defective tenancy due to the roach and mouse infestations alleged by the Tenants. The Commission finds that the Landlord made timely and good faith efforts to rectify the alleged pest infestations by having the Unit treated for both roaches and mice on January 29, 2007, and on February 24, 2007. Further extermination of the Unit occurred on or about April 6, 2007, by the pest control company under contact to the condominium association and the Landlord also sealed a hole behind the refrigerator to prevent a possible entryway for pests into the Unit.

3. The Commission finds that the other violations in the Unit, listed on the Montgomery County DHCA housing code inspection report (Exhibit 5) by Robert Goff, Housing Code Inspector, constitute minor housing code violations and do not rise to the level of a defective tenancy. Further, none of the housing code violations constitute serious sanitary, health or safety issues. The Commission

further finds that the Landlord made prompt and reasonable efforts to repair the violations after receiving a copy of the housing code inspection report on or about April 25, 2007. These violations listed on the housing code inspection report included a loose light fixture in a closet, a small section of missing floor trim in the dining room hallway, an entry door that did not self-close and self-latch, a bathroom sink faucet that dripped, and holes behind the dishwasher and refrigerator.

4. The Commission finds no merit in the Tenant's complaint that their privacy was violated by the Landlord's act of giving the key to a neighbor to unlock the door for an electrician who was coming the Unit for the purpose of making repairs requested by the Tenants. Section 6.16.140.A.2 specifically provides that "[i]f the tenant has requested repairs, the landlord may enter the rental unit to make such repairs without written notice if the repairs take place within 2 weeks of the tenant's request." On May 14, 2007, the Tenants e-mailed the Landlord to report a malfunction with the bathroom light fixture. An electrician came to the Unit three days later, on May 17, 2007, to repair the bathroom problem. The fact that the neighbor (who was acting as the Landlord's agent for this purpose) apparently did not wait long enough after knocking for Tenant James Bradford to answer the door before providing access to the Unit for the electrician to make repairs in the Unit, does not constitute a breach of lease or a defective tenancy or otherwise entitle the Tenants to a rent rebate or to void the lease.

5. The Landlord in an e-mail to the Tenants indicated that a late fee of \$50.00 was due because June 2007 rent had not been paid by June 8, 2007, and also that if rent was not received by June 10th, then a 10% late fee would be assessed. *See* Exhibit 8 (June rent - late charge). Under City law, a late fee may not be charged if the rent is received within 10 days of the rent due date (*i.e.*, the 1st of the month). However, there is no evidence that the Landlord actually charged the Tenants more than a \$50.00 late fee (which is less than the allowable 5% late charge) on the June rent. Further, the Commission finds that the Tenants never paid either rent or a late fee for June 2007. Rather, the

Landlord retained the Tenants' security deposit and accrued interest as damages for the unpaid June 2007 rent and \$50.00 late fee. *See* Exhibit 9 (letter from Michael S. Krotman dated July 5, 2007). Given that a 10% late charge was not, in fact, assessed to or collected from the Tenants, the Commission does not find that the Landlord's June 8, 2007, e-mail constituted a breach of lease or a defective tenancy.

6. The Commission finds that, on or about April 29, 2007, the Tenants signed a contract to purchase a house at 420 Lincoln Avenue, Takoma Park, Maryland, and that a Deed conveying this house to the Tenants was signed on June 25, 2007. Tenants gave notice to the Landlord on May 17, 2007, that they would be vacating the Unit as of June 30, 2007, which was seven months prior to the expiration of the Tenants' lease for the Unit. The Tenants' Complaint was filed on April 17, 2007, which was only 12 days before the Tenants' entered into the house purchase contract. The Commission notes that the Tenants' purchase of a house, and understandable desire to move into this house, gave the Tenants incentive to find a way to terminate their lease with the Landlord.

V. ORDER.

Accordingly, it is this _____ day of October 2007, by the City of Takoma Park Commission on Landlord-Tenant Affairs,

ORDERED, that the Commission finds in favor of the Landlord, Sophia Parkes, and against the Tenants, James Bradford and Ana Corado, on all claims and denies the Tenants' request for a rent rebate of 40% of the monthly rent for the Unit and also denies the Tenants' request that the Commission find the Lease that the Tenants signed to rent the Unit to be void.

Steve Wasser, Presiding Commissioner

Robert A. Liebreich, Commissioner

Catherine Carl Wakelyn, 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 agency decisions within thirty (30) calendar days from the date of the final Opinion and Order. The filing of a petition for judicial review ("appeal") will not stay a final Opinion and Order unless so ordered by a court of competent jurisdiction.

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