

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

Deborah Cooke
PO Box 7170
Langley Park, MD 20787

Tenant

v.

Lee Avenue Apartments, L.L.C.
11912 Maple Ave., Suite C
Rockville, MD 20852

Landlord

COLTA Case No. 07-56T

OPINION AND ORDER

I. INTRODUCTION.

On September 28, 2007, Deborah Cooke (“Tenant”), the tenant of 123 Lee Avenue, Apartment 302, Takoma Park, Maryland, filed a Complaint with the City of Takoma Park, Commission on Landlord-Tenant Affairs (“Commission”) against Lee Avenue LLC, (“Landlord”), the owner of the rental property located at 123 Lee Avenue. Exhibit 3. The Tenant’s Complaint alleged that the Landlord was responsible for a defective tenancy because her apartment (“Apartment”) was infested with bedbugs. The Tenant requested a rent rebate of \$525.00 per month beginning with the commencement of her lease on June 1, 2007, and sought compensation for her furniture that she claims she had to throw away because of the infestation and for medical treatment

that she required as the result of the chemicals the landlord used to treat the infestation. The Landlord did not respond to the Complaint

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 January 8, 2008. The Tenant was present at the hearing. No representative of the Landlord was present for 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.

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.”¹ § 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.

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.

III. EVIDENTIARY SUMMARY.

The Tenant's moved into the Apartment on June 1, 2007. She paid monthly rent of \$925.00. Exhibit 3. The Tenant testified that the Landlord never provided her with a copy of her lease.

The Tenant testified that she started experiencing insect bites while she was sleeping soon after she moved into the Apartment. The Tenant testified that a neighbor from another unit in the building told her that she (the neighbor) had bedbugs in her apartment. In a letter to the Landlord dated August 8, 2007, the Tenant complained that she suffered from bite marks on her arms, legs and hands. Exhibit 5. The Tenant stated that she awoke one night at 3:30 a.m. and saw a bug running across her t-shirt, which broke in her hand and spilled blood when she grabbed it. Exhibit 3.

The Tenant complained to the Landlord's property manager, Mr. Yancey, and he gave her some powder to sprinkle on her mattress and refused to provide additional assistance. Exhibit 3. She Testified that Mr. Yancey accused her of bringing the bedbugs with her when she moved into the Apartment, when he knew that the Property had been infested for several years.² Exhibit 5. The Tenant then complained to the City of Takoma Park Landlord-Tenant Office, and, on August 8, 2007, and Mr. Yancey chastised her for doing so. The Tenant testified that Mr. Yancey also ridiculed her and other tenants for being immigrants.

In a letter to the Landlord dated August 30, 2007,³ the Tenant complained that her apartment had not yet been treated for bedbugs. Exhibit 3. In the letter, the Tenant stated, "My apartment is

² Code Enforcement records regarding the Property indicate that inspections revealed bedbugs in several units in the Property in 2006 and 2007.

³ Although the letter is dated August 30, 2007, the body of the letter includes entries discussing the conditions in the Tenant's Apartment from August 27-30, 2007, and September 1-6, 2007. The Office of Landlord-Tenant Affairs received its copy of the letter on September 10, 2007.

very invested [sic] with roaches and BEDBUGS. I NEED HELP FAST, SOON AND IMMEDIATELY.” Exhibit 5 (emphasis in original). She further stated,

Throughout this entire week and last week it has been a very frightening experience to sleep. Every day there are multiple bites all over my skin. It is sad and unfortunate that one cannot enjoy the comfort of one’s home.

Exhibit 5.

Montgomery County Code Enforcement Inspector Cece Kinna issued a municipal infraction citation to the Landlord for failing to exterminate the Apartment. Exhibit 7.

The Tenant testified that she moved out of the Apartment on November 30, 2007. The Tenant and the Tenant’s friend testified that the Tenant slept on the friend’s sofa before she vacated her Apartment and moved to a new apartment because of the bedbug infestation. She testified that she had to throw away her furniture because she did not want to carry the bedbug infestation to her new home. The Tenant submitted receipts⁴ for the following items of furniture, which she claims were infested and had to be thrown out:

<u>Item</u>	<u>Price</u>
Pine bedroom set	1,154.98
Sofa and Ottoman	1,651.35

Exhibit 8.

The Tenant requested compensation for medical costs she allegedly incurred as a result of a reaction to chemicals used to treat the infestation but did not present evidence of such costs.

⁴ The Tenant also submitted a receipt for her computer, but she testified that she decided to keep the computer because she did not believe that it posed the same risk as the wood furniture.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1. The Commission finds that the Tenant's tenancy in the Apartment commenced on June 1, 2007.

2. The Commission finds that the Landlord caused a defective tenancy by leasing the Apartment to the Tenant while the Apartment was infested with bedbugs and by failing to make timely good faith efforts eradicate the infestation. The Commission finds that the Property was infested with bedbugs before the Tenant moved into the property and that the Landlord was on notice of the infestation. The leasing of the Apartment for residential purposes while it was infested with bedbugs constitutes a breach of the implied covenant of quiet enjoyment. The Commission finds the Tenant's denial that she had bedbugs prior to commencing her tenancy to be credible. The Commission finds that the Landlord failed to make timely and good faith efforts to correct the infestation based on the Tenant's assertions that the Landlord, rather than hiring an exterminator, gave the Tenant powder and directed her to sprinkle it on her bed. Even after the Tenant notified the Landlord in writing that the powder did not eradicate the infestation, the Landlord took no further action.

The Commission finds that the bedbug infestation made sleeping in the Apartment physically and psychologically traumatic and eventually caused the Tenant to stop sleeping in her Apartment and then move out altogether. The Commission finds such conditions to be intolerable, and the Commission finds that the Tenant would have been justified in vacating the Apartment when she discovered the infestation. However, as the Tenant did not vacate the Apartment until November 30, 2007, the Commission must determine the extent to which the infestation reduced the value of the tenancy. The Commission finds that providing a place to sleep is the primary purpose of a residential tenancy and, therefore, the bedbug infestation, which prevented the Tenant from comfortably

sleeping, significantly reduced the value of her tenancy. The tenant requested a rent abatement of \$525.00 per month, which is a 56% reduction of her monthly rent of \$925.00. The Commission finds that the bedbug infestation reduced the value of the tenancy by at least 56% and grants the rent rebate requested by the Tenant from June 1, 2007, through November 30, 2007. The Tenant is hereby awarded a rent rebate of \$3,150.00. The Commission holds that the infestation constituted a constructive eviction and that the Tenant is not liable for rent after she vacated the Apartment on November 30, 2007.⁵

3. The Commission finds the Tenant's assertion that her furniture was infested and had to be thrown out to be credible. The Commission further finds that the Landlord is responsible for causing the Tenant's furniture to become infested because, as noted above, the Landlord leased the Apartment to the Tenant while it was infested and failed to make good faith efforts to treat the infestation. The Commission finds that the receipts the Tenant submitted accurately reflect the cost of the Tenant's furniture. The Tenant testified that she has not yet replaced the furniture with similar furniture because her current residence is too small. Therefore, the Commission finds that the receipts for the infested furniture provide the best available evidence of the cost of replacing the furniture. Accordingly, the Commission holds that the Landlord is liable to the Tenant for the cost of replacing her infested furniture, including \$1,154.98 for her bedroom set, and \$1,651.35 for her sofa and ottoman.

⁵ The Tenant testified that she had not yet received a refund of her security deposit or written notice of damages to be deducted from her security deposit and asked that the Commission require the Landlord to refund her security deposit. However, the time for the Landlord to refund the security deposit or notify her of alleged damages had not expired when the Commission heard this matter. Accordingly, if the Tenant does not receive a timely written notice of damages deducted from her security deposit or finds that any deductions from her security deposit are improper, she should file a new COLTA complaint.

V. ORDER.

Accordingly, it is this 8th day of February 2008, by the City of Takoma Park Commission on Landlord-Tenant Affairs,

ORDERED, that the Landlord, Lee Avenue Apartments, L.L.C., shall pay to the Tenant, Deborah Cooke, \$5,596.33.

ORDERED, that the Landlord shall comply with this Order within thirty days.

Steve Wasser, Presiding Commissioner

Jarrett K. Smith, Commissioner

Kelly A. O'Brien, 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 will not stay a final Opinion and Order unless so ordered by a court of competent jurisdiction.

V:\StaffShare\Website\COLTA.Case.Request.FINAL.ORD.7.01.15\Cooke v. Denchfield 2007-56T.wpd