

CITY OF TAKOMA PARK  
COMMISSION ON LANDLORD-TENANT AFFAIRS

Laurel Mankiewicz  
614 Sligo Ave. #410  
Takoma Park, MD 20912  
Tenant

v.

Martin Ellman, Ellman Properties  
2829 NE 35<sup>th</sup> St.  
Fort Lauderdale, FL 33306  
Landlord

COLTA Case No. 07-64T

**OPINION AND ORDER**

**I. INTRODUCTION.**

On December 4, 2007, Laurel Mankiewicz (“Tenant”), the former tenant of 612 Kennebec Avenue # 101, 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 Martin Ellman and Susanne McCoy, TA Ellman Properties (“Landlord”), the owner of the Property. This Complaint was docketed as Case No. 07-64T.

The Tenant’s Complaint alleged that the Landlord wrongfully withheld her security deposit and sought a refund of her security deposit plus interest.

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 18, 2008. The Tenant was present at the hearing. The Landlord was not 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.” 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 March 7, 2002. Exhibit 4. The Tenant paid a security deposit of \$915.00. The Tenant moved out of the Property on September 30, 2007, and the Landlord inspected the Property with the Tenant on that date.

In a letter dated October 30, 2007, the Landlord notified the Tenant of alleged damage to the Property incurred during her tenancy, Exhibit 5, which provided the following itemization of credits, damages, and deductions:

Security Deposit	\$915.00
Additions: Interest	\$201.30 +
	<u>Actual Cost</u>

Deductions:	Replace cracked bathroom fixture	\$ 92.00	
	Replace missing exhaust fan cover	82.00	
	Replace missing under-counter fixture cover	95.00	
	Replace burned-out ceiling fan	95.00	
	Replace missing kitchen blind	15.00	
	Replace 3 burned out bulbs	15.00	
	Replace custom screen missing from 2 <sup>nd</sup> bedroom window	74.50	
	Cleaning (floors, under frig, bath- room, drawers, sink, stove)	<u>99.75</u>	<u>\$568.25</u>
	<b>BALANCE</b>		<u><u>\$548.05</u></u>

The Landlord sent the Tenant a check for \$548.05 and advised the Tenant that her endorsement of the check would constitute acceptance of its accounting of the security deposit. Exhibit 5.

The Tenant testified that the Landlord improperly deducted the cost of the cracked bathroom fixture from her security deposit because the fixture was already broken when she moved into the Property. She testified that she left the exhaust fan cover and the cover for the under counter light fixture in the kitchen drawer because they kept falling down. She testified that she cleaned and tested the exhaust fan prior to moving out and that it was not broken. She testified that all of the light bulbs worked when she moved out. She testified that she cleaned the entire apartment except she did not clean under the refrigerator or the oven. She testified that the oven was not clean when she moved into the apartment. She conceded that the screen was missing from the bedroom.

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

1. The Commission finds that the Tenant entered into a one-year tenancy commencing on March 7, 2002. The tenancy converted to a month-to-month tenancy by operation of law on March 1, 2003.

2. The Commission finds, based on the lease, that the Tenant paid a security deposit of \$915.00 on or about March 7, 2002. Exhibit 4.

3. The Commission finds that the Tenant vacated the Property on September 30, 2007. Exhibits 3 and 5.

4. The Commission finds, based on the Lease, Exhibit 4, and the Landlord's calculation, Exhibit 5, that the Tenant's \$915.00 security deposit accrued simple interest from March 7, 2002, through September 30, 2007, at a rate of 4% per annum, measured in six month intervals, for a total of \$201.30.

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." The *Code* does not require the Landlord to provide the Tenant with receipts for the cost incurred. Accordingly, the Commission holds that the Landlord did not waive its right to withhold any portion of the Tenant's security deposit.

6. The Commission finds, based on the testimony of the Tenant and the Landlord's notice of damages, Exhibit 5, that the Landlord properly withheld \$74.50 for the replacement of the missing screen from the bedroom window and \$10.00 for cleaning under the refrigerator.

7. The Commission finds, based on the testimony of the Tenant, that the Landlord was not entitled to make the following deductions from her security deposit:

Deductions:	Replace cracked bathroom fixture	\$ 92.00
	Replace missing exhaust fan cover	82.00
	Replace missing under-counter fixture cover	95.00
	Replace burned-out ceiling fan	95.00
	Replace missing kitchen blind	15.00
	Replace 3 burned out bulbs	15.00

Cleaning (floors, under frig, bath-  
room, drawers, sink, stove) 89.75

\$483.75

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	\$915.00
Accrued interest from March 7, 2002 to Sept. 30, 2007	201.30
Replacement of bedroom screen	(74.50)
Cleaning under refrigerator	<u>(10.00)</u>
Security deposit refund to Tenant	\$1,031.80

**V. ORDER.**

It is this 22<sup>nd</sup> day of April 2008, by the City of Takoma Park Commission on Landlord-Tenant Affairs, ORDERED, that the relief requested by the Tenant, Laurel Mankiewics, is GRANTED in part and DENIED in part; and

ORDERED that the Landlord, Martin Ellman and Susanne McCoy, TA Ellman Properties , shall pay to the Tenant \$1,031.80 as a refund of the Tenant's security deposit within 30 days of the date of this Order.

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Jarrett Smith,  
Presiding Commissioner

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Mary Forrest-Doyle, Commissioner

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Peter Munger, 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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