

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

Cassie L. Lynott
8312 Flower Ave., Apt. 5
Takoma Park, MD 20912

Tenant

v.

COLTA Case Nos. 07-45T and 08-3T

8312 Flower Avenue Apartments, L.L.C.
11912 Maple Ave., Suite C
Rockville, MD 20852

6011 Emerson Street, # 308
Bladensburg, MD 20710

Landlord

OPINION AND ORDER

I. INTRODUCTION.

On July 25, 2007, Cassie L. Lynott (“Tenant”), the tenant of 8312 Flower Avenue, Apartment 302, Takoma Park, Maryland, filed a Complaint with the City of Takoma Park, Commission on Landlord-Tenant Affairs (“COLTA” or “Commission”) against 8312 Flower Avenue LLC (“Landlord”), the owner of the rental property located at 8312 Flower Avenue. Exhibit 3. The Tenant’s Complaint alleged that the Landlord was responsible for a defective tenancy because her apartment (“Apartment”) was infested with cockroaches and there were holes in the walls that exposed electrical wires. The Tenant requested monetary damages and that the Landlord be required

to hire a professional exterminator or that she be permitted to terminate her lease without a penalty. The Commission docketed the Complaint as Case No. 07-45T. On January 29, 2008, the Tenant filed a second Complaint alleging that the Landlord breached her lease by failing to pay the electrical bill for the Apartment. The Tenant requested reimbursement for her payment of the bill. The Commission docketed the Complaint as Case No. 08-03T. The Commission consolidated the Complaints. The Landlord did not respond to either 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 April 22, 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

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.

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.

Section 6.16.130 governs the transfer of responsibility for the payment of utility costs from a landlord to a tenant. Prior to making such a transfer, the landlord must provide the tenant with three months' written notice and the landlord must reduce the tenant's rent by an amount commensurate with the utility costs for the unit based on utility usage for the preceding 24 months.

III. EVIDENTIARY SUMMARY.

The Tenant's tenancy commenced on June 1, 2007. Exhibit 4. Her monthly rent was \$850.00. Exhibit 4.

The Tenant testified that she observed holes in the wall and exposed electrical wiring in the hallway of the Apartment when she first viewed the Apartment with the Landlord's resident manager, Mr. Yancy. She testified that Mr. Yancy advised her that the holes would be repaired before she moved into the Apartment. The Tenant asserted that the Landlord had not repaired the holes by the time she moved into the Apartment and that Mr. Yancy advised her that the holes would be repaired very soon.

The Tenant asserted that she discovered the cockroach infestation when she moved into the Apartment. She saw cockroaches and discovered roach traps in the cabinets when she was unpacking. A May 29, 2007, property maintenance inspection revealed that other units in the Property were infested with cockroaches. Exhibit 9. The Tenant testified that the infestation grew worse and that she called Mr. Yancy on June 12, 2007, to notify him of the infestation and request an extermination. The Tenant asserted that Mr. Yancy suggested that he set off a roach bomb in the Apartment. The Tenant declined this approach because she was concerned about the impact of the

bomb on her husband's many oil paintings. She and Mr. Yancy agreed that he would apply insecticide gel instead, and, on June 15, Mr. Yancy applied gel to cracks in the doorway of the Apartment and to the kitchen cabinets.

On June 24, 2007, the Tenant notified the Landlord's Agent, Eric Denchfield, that the gel treatment had not worked and requested that the Landlord hire a professional exterminator to treat the Apartment. Exhibit 5. She also advised him that the holes in the wall had not yet been repaired. Exhibit 5.

The Landlord repaired the holes in the hallway wall on July 16, 2007. At 7:30 p.m. on July 16, Mr. Yancy advised the Tenant that the exterminator would be coming the next day between noon and 1:30 p.m. to spray the Apartment. Mr. Yancy advised the Tenant that she would not need to vacate the Apartment for the extermination. On July 17, at 4:15 p.m., Mr. Yancy arrived at the Apartment with the exterminator, and the exterminator advised the Tenant that the extermination would take fifteen minutes per unit and that the property would have to be vacated for four to six hours after the extermination. Based on this information, the tenant estimated that it would take until 6:30 p.m. to complete the extermination and that she would not be able to return to her Apartment until between 10:30 p.m. and 12:30 p.m. that evening. She advised the Landlord that she would not allow the extermination to proceed because she was not prepared to vacate her Apartment for the evening because of the short notice.

The Tenant testified that the exterminator came back later to treat her Apartment but that he only treated the kitchen. The exterminator advised her that there were holes in the walls that had to be sealed or else the roaches would come back. She testified that the exterminator had to treat the Apartment three times and that the infestation continued until October 2007. She testified that she was unable to use her kitchen for four months because of the infestation, that she found roaches in

her bed, and that she had to wash her clothing multiple times because of the infestation.

The Tenant requested a rent refund of \$100.00 per month for the three months that the Apartment was most severely infested with cockroaches. She also requested \$100.00 for the replacement of food and rugs that she had to throw out because of the infestation. She requested a rent refund of \$50.00 per month for the two-and-a-half months that there were holes and exposed electrical wires in the hallway.

The Tenant's lease assigns responsibility for paying the electric utility bills for the Apartment to the Landlord. Exhibit 4, ¶19. On January 14, 2008, the Landlord sent the Tenant a Pepco bill that was due January 8, 2008. The bill included electrical usage from September 2007 through December 15, 2007, and late fees. The Tenant testified that she called Pepco and Pepco advised her that payment was due for usage through January 16, and that if the bill was not paid, it would cut off service to the Apartment. The Tenant paid Pepco \$204.68 to avoid having her electricity cut off. Exhibit 11A. The Tenant requested reimbursement of that amount. The Landlord did not notify the Tenant that it intended to transfer responsibility for payment of electric bills to the Tenant until April 16, 2008, and the notice indicated that the transfer would be effective July 1, 2008. Exhibit 13.

The Tenant testified that she was vacating the Apartment on May 31, 2008.

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 cockroaches and by failing to make timely good faith efforts eradicate the infestation. The Commission finds that the Property was

infested with cockroaches before the Tenant moved into the property and that the Landlord was on notice of the infestation based on the Tenant's testimony that there were roach traps in the unit when she moved in and the fact that a May 29, 2007, property maintenance inspection revealed that other units in the Property were infested. Exhibit 9. The Commission finds that the Landlord failed to make timely good faith efforts to correct the infestation based on the Tenant's assertions that the Landlord, rather than hiring an exterminator, had the Resident Manager attempt to treat the Apartment, and then attempted to have the Apartment exterminated at 4:15 p.m. without providing the Tenant prior notice that she would have to vacate the Property for four to six hours.

The Commission finds, based on the Tenant's testimony, that the roach infestation prevented her from using the kitchen for four months and reduced the Tenant's enjoyment of her apartment. The Commission finds that providing a place to store and prepare food is a major purpose of a residential tenancy and, therefore, the roach infestation, which prevented the Tenant from using her kitchen, significantly reduced the value of her tenancy. The tenant requested a rent abatement of \$100.00 per month for June, July, and August 2007, which is a 12% reduction of her monthly rent of \$850.00. The Commission finds that the roach infestation reduced the value of the tenancy by at least 12% and grants the rent rebate requested by the Tenant. The Tenant is hereby awarded a rent rebate of \$300.00.

3. The Commission finds the Tenant's assertion that she had to throw out \$100.00 worth of food and rugs to be credible. The Commission further finds that the Landlord is responsible for causing the Tenant's food and rugs 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. Accordingly, the Commission holds that the Landlord is liable to the Tenant for \$100.00 for the value of her food and rugs.

4. The Commission finds that the Landlord caused a defective tenancy by leasing the Apartment to the Tenant when there was a hole in the wall that exposed electrical wires. The Commission finds that the Landlord was on notice of the defect because the landlord acknowledged the hole and promised to fix it when the Tenant first visited the property before deciding to move into the Apartment. The Commission finds that the Landlord failed to make timely good faith efforts to correct the infestation based on the fact that the Landlord did not repair the hole for more than six weeks.

The Commission requested a rent rebate of \$50.00 per month, a 6% reduction of her monthly rent. The Commission finds that the presence of a hole in the wall in the common area of the Apartment that exposed electrical wires reduced the value of the tenancy by at least 6% and grants the rent rebate requested by the Tenant. The Tenant is hereby awarded a rent rebate of \$75.00 for the one and a half months that the landlord failed to repair the hole.

5. The Commission finds that the landlord breached the lease and improperly transferred responsibility for paying the electrical bills to the Tenant based on the assertions of the Tenant, Exhibit 10A, the fact that the Tenant was in possession of a Pepco bill addressed to the Landlord, and the Tenant's payment of the Pepco bill. Exhibit 11A. The Commission holds that the Landlord is liable to the Tenant for \$204.68, to reimburse her for the Pepco bill she paid.

6. The Commission holds that the Tenant's request that the Commission require the Landlord to hire a professional exterminator to treat the Apartment is moot because the Landlord already eliminated the cockroach infestation.

7. The Commission holds that the Tenant's request that the Commission permit her to terminate her lease without penalty is moot because the Tenant's lease term expires on May 31, 2008, and the Tenant has already given the Landlord notice of her intent to vacate at the end of her lease

term.

V. ORDER.

Accordingly, it is this 21st day of May 2008, by the City of Takoma Park Commission on Landlord-Tenant Affairs,

ORDERED, that the Landlord, 8312 Flower Avenue Apartments, L.L.C., shall pay to the Tenant, Cassie Lynott, \$679.68.

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

Mary Forrest-Doyle, Presiding Commissioner

Dorothy Clennon, Commissioner

Steve Wasser, 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.

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