

CITY OF TAKOMA PARK  
COMMISSION ON LANDLORD-TENANT AFFAIRS

Mitiku Negassa  
11536 February Circle, #402  
Silver Spring, MD 20904

Tenant

v.

COLTA Case No. 08-1T

Lee Avenue Apartments, LLC  
Eric Denchfield  
11912 Maple Ave.  
Rockville, MD 20852

Landlord/Owner  
and

K&R Management Group, Inc.  
5950 Ager Road  
Hyattsville, MD 20782

Landlord/Agent

**OPINION AND ORDER**

**I. INTRODUCTION.**

On January 8, 2008, Mitiku Negassa (“Tenant”), a former tenant of 115 Lee Avenue, Apartment 33, Takoma Park, Maryland (“Apartment”), filed a Complaint with the City of Takoma Park Commission on Landlord-Tenant Affairs (“COLTA” or “Commission”) against Eric Denchfield/K&R Management Group, Inc. This Complaint was docketed as Mitiku Negassa v. Lee

Avenue Apartments, LLC/Eric Denchfield, Case No. 08-0-1T. At the time of the hearing, the Commission amended the case caption as set forth above. Lee Avenue Apartments, LLC (“Landlord/Owner”) is the owner of the Lee Avenue Apartments located at 115-123 Lee Avenue, Takoma Park, MD 20912 (“property”). K&R Management Group, Inc. (“Landlord/Agent”) is the Agent for the Landlord per the Tenant’s Lease. Both the Landlord/Owner and Landlord/Agent are referred to in this Opinion and Order as “Landlord.”

The Tenant’s Complaint alleged that the Landlord failed to return his security deposit of \$950.00 and sought a refund of his security deposit, plus interest and three times the amount of the security deposit.

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 May 20, 2008. The Tenant was present at the hearing. The Tenant, as the party filing the Complaint, has the burden of proof by a preponderance of the evidence. *Takoma Park Code* §6.24.080.J. No one attended the hearing on behalf of the Landlord.

## **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, within 45 days of the termination of the tenancy, either to return the security deposit to the tenant or to provide to the tenant with 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).<sup>1</sup>

### **III. EVIDENTIARY AND HEARING SUMMARY.**

The Tenant entered into a one-year lease for the Apartment with the Landlord commencing on December 1, 2004, and paid a security deposit of \$950.00. Exhibit 4. At the expiration of the one-year lease term (November 30, 2004), the Tenant remained in the Apartment as a month-to-month tenant. By letter dated August 19, 2007, the Tenant notified the Landlord that his tenancy of the Apartment would terminate on September 18, 2007. This letter also gave the Tenant's new address and requested "implementation of the lease provisions in a timely manner with regard to the apartment inspection and refund of the deposit money." Exhibit 3 (page 3). The Tenant testified that he also hand-delivered a copy of this letter to the on site property manager, Mr. Yancy Suber.

The Tenant testified that he moved out of the Apartment pursuant to his notice of intent to vacate on September 18, 2007, and that he never received a notice from the Landlord of a move-out inspection. The Tenant further stated that he has not received either a written list of damages to the Apartment from the Landlord or a return of his security deposit plus accrued interest and that more than 45 days have passed since the termination of his tenancy. The Tenant said that he had tried to call the Landlord's office regarding the return of his security deposit, but that he got no response.

At the hearing, the Tenant stated that he was seeking the return of his \$950.00 security deposit, accrued interest on the deposit, and damages equal to three times the security deposit for the Landlord's failure to comply with the security deposit law.

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

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<sup>1</sup> Both the Tenant's lease, in #3 (*see* Exhibit 4) and section 6.16.120 of the *Takoma Park Code* state that the interest rate on the security deposit is 4% per annum. However, effective October 1, 2004, the Maryland General Assembly amended *Md. Code Ann.*, Real Prop. §8-203(e) to reduce the statutory interest rate on security deposits from 4% to 3%.

1. The Commission finds that the Tenant entered into a lease for the Apartment with the Landlord with the Tenant's occupancy commencing on December 1, 2004, and terminating on November 30, 2005. Exhibit 4. The Commission finds that the tenancy converted to a month-to-month tenancy by operation of law on December 1, 2005.

2. The Commission finds that the Tenant paid a security deposit of \$950.00 at the time Tenant commenced occupancy of the Apartment on December 1, 2004. Exhibit 4.

3. The Commission finds that the Tenant gave written notice to the Landlord that he would be vacating the Apartment on September 18, 2007 (Exhibit 3, page 3), and that Tenant did vacate the Apartment on that date.

4. The Commission finds that the Tenant's \$950.00 security deposit has accrued interest at the statutory rate of 3% per annum from December 1, 2004, through the present. This period includes seven six-month periods at interest of \$14.25 for each six month period, amounting to a total of \$99.75 interest due through May 31, 2008. The Commission further finds that simple interest of 3% per annum for each six month period (*i.e.*, \$14.25) after May 31, 2008 (*i.e.*, June 1 through November 30 and December 1 through May 31 of the next year) will continue to accrue on the security deposit until the deposit plus interest is returned to the Tenant.

5. The Commission finds that the Landlord did not comply with section 8-203(g) of the Real Property Article of the *Annotated Code of Maryland*, which required the Landlord to send to the last known address of the Tenant, within 45 days of the termination of the tenancy, a written list of damages claimed along with a statement of actual costs incurred or to return the security deposit, together with interest, to the Tenant. Accordingly, the Commission holds that the Landlord has forfeited its right to withhold any portion of the Tenant's security deposit.

6. When a Landlord, without a reasonable basis, fails to return any part of the Tenant's

security deposit, plus accrued interest, within 45 days after termination of the tenancy the tenant has an action of up to threefold of the withheld amount. *See Md. Code Ann.*, Real Prop. Art. §8-203(e)(4). The Commission finds that the Landlord has not refunded the security deposit plus interest to the Tenant and that the statutory time for return of the deposit has long passed. However, the Commission declines to award the Tenant three times his deposit due to the Landlord's failure to refund the deposit and notes that the Tenant vacated the Apartment after giving less than a full one month rental period notice to the Landlord.

**VI. ORDER.**

Upon consideration of the verified complaint, exhibits, and any evidence presented at the hearing in this case, it is this 5th day of June, 2008, by the City of Takoma Park Commission on Landlord-Tenant Affairs:

ORDERED, that the Landlord shall pay to the Tenant \$950.00 as a refund of the Tenant's security deposit, plus accrued interest of \$99.75, for a total of \$1,049.75; and it is further

ORDERED, that for each six-month period after May 31, 2008, that the above amount remains unpaid, the Landlord shall pay the Tenant an additional \$14.25 interest on the security deposit.

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Kelly O'Brien, Presiding Commissioner

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Dorothy Clennon, Commissioner

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Mary Forrest-Doyle, 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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