

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

Veronique & Jacques Bure  
1001 Sligo Creek Parkway  
Takoma Park, MD 20912

Tenant

v.

COLTA Case No. 08-02T

Mervyn Ferroe & Ann Scarborough  
2550 Luanda Place  
Dulles, VA 20189

Dolores Gick  
Marydale Realty Management  
3717 Decatur Ave, #2  
Kensington, MD 20895

Landlord

**OPINION AND ORDER**

**I. INTRODUCTION.**

On June 28, 2008, Veronique and Jacques Bure (“Tenants”), the tenants of 135 Ritchie Avenue, Takoma Park, Maryland (“Property”), filed a Complaint with the City of Takoma Park, Commission on Landlord-Tenant Affairs (“Commission”) against Ferroe Mervyn and Ann Scarborough, the owners of the Property, and the owners’ agent, Marydale Realty Management (“Landlord”). Exhibit 3. The Tenants’ Complaint alleged that the Landlord was responsible for a defective tenancy because of broken window panes, window frames that would not stay open,

insufficient air conditioning, a broken refrigerator, and because Code Enforcement prohibited them from using one of the bedrooms and the basement for sleeping. The Tenants requested a rent rebate of \$300.00 per month beginning with the commencement of their lease on June 1, 2005, and continuing until they vacated the Property on February 28, 2008, and requested that the Commission terminate their lease effective February 28, 2008. The Landlord filed a response to the Complaint on February 21, 2008. Exhibit 5.

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 June 3, 2008. Mr. Bure was present at the hearing. Dolores Gick of Marydale Realty Management, Inc., appeared on behalf of the Landlord. 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.”<sup>1</sup> § 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

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<sup>1</sup> 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. Defective tenancy complaints must be filed within one year of the date of the occurrence. § 6.24.060.C.

### **III. EVIDENTIARY SUMMARY.**

The Tenants moved into the Property on June 1, 2005. The Tenants' initial lease provided for a one-year tenancy with a monthly rent of \$1,695.00. Exhibit 4. The Tenants renewed their lease for an additional one-year tenancy commencing June 1, 2006, with a monthly rent of \$1,750.00, and for a third one-year tenancy commencing on June 1, 2007, with a monthly rent of \$1,850.00. Exhibit 4A.

The Tenants asserted that the Landlord caused a defective tenancy because the Landlord advertised the Property as having three bedrooms, but, on August 23, 2007, a Montgomery County Code Enforcement Officer inspected the Property and advised the Tenant that the basement, which the Tenants used as a guest bedroom, was not fit for human habitation because of the lack of a window that could be used for egress. Exhibit 3-6. The Code Enforcement Officer issued an Emergency Field Notice on August 23, 2007, requiring the Tenants immediately to remove all bedding from the basement. Exhibit 7. During a reinspection of the Property the following week, the Code Enforcement Officer advised the Tenants that one of the upstairs bedrooms, with an area of 64 square feet, was too small to be used as a bedroom. Exhibit 3-6. The Tenants asserted that occasionally they used the bedroom as an additional guest room.

Dolores Gick asserted that the house had been used as a three bedroom house for many years. Exhibit 5. She asserted that the Landlord had advised the Tenants not to use the basement as a bedroom before the Code Enforcement Officer issued the Emergency Field Notice.

The Tenants asserted that the Landlord caused a defective tenancy by failing to repair or replace the refrigerator in the Property. The Tenants asserted that the refrigerator did not function properly from the commencement of their tenancy on June 1, 2005. The Tenants asserted that the refrigerator provided inconsistent cooling and that the food in the freezer section of the unit thawed occasionally. Exhibit 3-1. The Tenants asserted that water often leaked from the refrigerator. The Landlord sent an appliance repairman to fix the refrigerator several times. The refrigerator became very warm in the last week of December 2007, and the Tenants became ill as a result of eating food from the refrigerator. The refrigerator failed on January 2, 2008, and the Landlord replaced the refrigerator eight days later. Exhibit 3-1. The Landlord attempted to charge the Tenants \$227.50 for the September 19, 2007, service call, Exhibit 3-3, but when the Tenants requested an itemized bill, the Landlord sent an invoice for \$133.00. Exhibit 3-4. The September 19, 2007, service call involved clearing the defrost drain and cleaning the condenser. Exhibit 3-4. The repair invoice indicated that the refrigerator was 19 years old. Exhibit 3-4.

Ms. Gick asserted that the Tenants were responsible for the problems with the refrigerator because they failed to keep the condenser clean and the defrost drain clear.

The Tenants asserted that the glass in two windows in the Property was already broken when they moved into the Property in 2005 and that they requested that the Landlord replace the glass at that time. Exhibit 3-1. The Landlord repaired the broken glass in July 2007, following a rental housing inspection. Exhibit 3-1.

The Tenants asserted that the July 2007 rental housing inspection revealed that none of the windows operated properly. Exhibit 6. The Tenant explained that the windows would not stay open. A Code Enforcement Officer reinspected the Property on September 10, 2007, and issued a citation because the Landlord had not repaired the windows. Exhibit 3-5.

Ms. Gick testified that a contractor repaired the windows on February 26, 2008, but the Code Inspector would not sign off on the repairs. She testified that the Inspector's supervisor eventually signed off on the repairs.

The Tenants asserted that, in July 2007, they notified the Landlord that the air conditioning ran continuously but would not cool the house below 80 degrees. The Tenants asserted that the Landlord sent a service technician and that the technician said that they should not bother using the air conditioning because it could not cool the house. Exhibit 3-1.

The Landlord asserted that it received a complaint from the Tenants regarding the air conditioning in August 2007. Exhibit 5. The Landlord asserted that the air conditioning was serviced following the complaint and that the Tenants did not make another complaint about the air conditioning. The Landlord submitted a letter from Steve Tucker of Tuckers Air Conditioning and Heating, LLC, in which Mr. Tucker stated that a service technician went to the Property on August 13, 2008, to respond to a report of no air conditioning. Exhibit 5. The technician reported that the blower speed in the furnace was set too high for the air conditioner, and that he adjusted the fan speed and the refrigerant pressure. The technician stated that the air conditioner was too small for the house and recommended that the Landlord install a larger unit. The technician indicated that the air conditioning system was operating properly after the adjustment. According to the letter, Tucker Air Conditioning and Heating provided the Landlord with an estimate of the cost of replacing the air conditioner on August 16, 2007. Exhibit 5. Ms. Gick argued that the Landlord was not legally responsible for maintaining the air conditioner.

Mr. Bure testified that he and his wife decided to move out of the Property because, after the loss of the third bedroom, it no longer suited their needs. He also testified that the Landlord's unresponsiveness to requests for repairs, which he said had started at the commencement of the

tenancy, became intolerable. He further testified that, because of a change with his employment, he and his wife decided to buy a house.

Ms. Gick asserted that the Tenants were responsible for the rent for the Property through the end of the lease. The Tenants paid \$1,850.00 in rent and a late fee of \$92.50 for March 2008. Exhibit 11. She testified that when the Tenants moved out, she listed the Property on the multiple listing service and advertised it on Craigslist at a monthly rent of \$1,850.00 through May 31, 2008, and \$1,900.00 commencing on June 1, 2008. She testified that the Tenants were responsible for maintaining the Property until the Landlord relet the Property. She testified that she had not yet relet the Property and that it was difficult to find a new Tenant because of the poor condition of the Property. She testified that the gutters were full of debris, that vines were growing up the house, and that the grass was very high.

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

1. The Commission finds that the Tenants' tenancy in the Property commenced on June 1, 2005.
2. The Commission finds that the Tenants' defective tenancy claims regarding the refrigerator and the broken glass in the windows are barred by section 6.24.060.C, which requires that complaints be filed within one year of the occurrence giving rise to the complaint. The Commission finds, based on the Complaint and the testimony of the Tenants that the defects existed and that the Tenants were aware of the defects when their tenancy commenced in June 2005. The Tenants did not file the Complaint in this proceeding until January 28, 2008. Therefore, the Commission holds that the Tenants' claims regarding the refrigerator and the broken glass are time barred.

3. The Commission finds that the third bedroom was 64 square feet and, therefore, did not meet the minimum size requirement (70 square feet) to be used for sleeping as required by section 26-5 of the *Montgomery County Code*. The Commission finds that the Landlord held the Property out as a three bedroom house, and that the Montgomery County Code Enforcement Office prohibited the Tenants from using the room for sleeping. The Commission finds that the Landlord knew, or should have known, that the room was too small to be used as a bedroom, particularly in light of the fact that the Landlord employed a realty management service. The Commission holds that the Landlord breached the implied covenant of quiet enjoyment by holding out the house as having three bedrooms, thereby causing a defective tenancy. The Commission finds that providing sleeping accommodations is the primary purpose of a residential tenancy and, therefore, the loss of one of the three bedrooms in the Property significantly reduced the value of the tenancy. The Tenants requested a rent abatement of \$300.00 per month, which is a 16% reduction of their monthly rent of \$925.00. The Commission finds that loss of the third bedroom reduced the value of the tenancy by at least 16% and grants the rent rebate requested by the Tenants from August 17, 2007, through February 28, 2008. The Tenant is hereby awarded a rent rebate of \$1,935.38 ((6 months x \$300) + (14 days x 9.67)).

4. The Commission finds that the Landlord did not represent to the Tenant that the basement was suitable for use as a bedroom and, therefore, holds that the Landlord is not liable to the Tenants as a result of the Code Enforcement Office requiring the Tenants to cease using the basement as a guest bedroom.

5. The Commission finds, based on the testimony and written allegations of the Tenants, that the air conditioning ceased to cool the house adequately in July 2007 and that the Tenants notified the landlord of that fact. The Commission further finds, based on the testimony of Mr. Bure

and the letter from Tuckers Air Conditioning and Heating, that the Landlord failed to make good faith efforts to remedy the problem with the air conditioner. The Commission finds credible the Tenants' assertions that the air conditioning would not cool the house below eighty degrees after the Landlord had the unit serviced and that the service technician advised them that the air conditioner would not be able to cool the house. The service technician's report that the air conditioner was not large enough to cool the house and the fact that Tuckers Air Conditioning and Heating provided the landlord with an estimate for replacing the air conditioner following the service visit corroborate the Tenants' assertions. Accordingly, the Landlord's single ineffective attempt to repair the air conditioner did not constitute a good faith effort to repair the defect.

The Commission disagrees with Ms. Gick's argument that the Landlord is not responsible for providing air conditioning. The *Takoma Park Code* requires that landlords "[m]aintain all gas, electrical, plumbing, and other facilities and conveniences supplied in good working order." §6.16.050. Therefore, because the Landlord supplied the air conditioning system at the outset of the tenancy, the Landlord is responsible for maintaining it in good working order.

Because the Landlord is responsible for maintaining the air conditioning in working order and failed to make good faith efforts to do so, the Commission finds that the Landlord is liable to the Tenant for causing a defective tenancy. The Commission notes that air conditioning significantly increases the comfort of a residential dwelling unit in Takoma Park. The Commission finds that the lack of sufficient air conditioning reduced the value of the tenancy by \$150.00 per month, which is 8% of the monthly rent, commencing on August 16, 2007 (the date Tuckers Air Conditioning and Heating provided the landlord with a quote for the cost of replacing the air conditioner), through September 30, 2007 (the end of the air conditioning season under section 6.16.160.C), for a total of \$223.00.



6. The Commission finds, based on the Code Enforcement records, that the windows of the home were defective, that the landlord had notice of the defective windows on July 14, 2007 (notice having been mailed on July 11, 2007), and that the Landlord had not repaired the windows as of September 19, 2007. The Commission finds, based on the testimony of Ms. Gick, that the Landlord did not attempt to repair the windows until February 2007. Therefore, the Commission finds that the landlord failed to make timely good faith efforts to repair the windows and holds that the Landlord is liable to the tenant for causing a defective tenancy. The Commission notes that, although maintaining windows properly is very important to the safety of a home, the lack of properly functioning windows does not have a significant impact on the value of a tenancy. This is particularly true in this case, where the Tenants did not even notice the problem with the windows until the Code Enforcement Officer identified the problem. Therefore, the Commission holds that the defective windows reduced the value of the Tenants' tenancy by \$10.00 per month from July 14, 2007, through February 28, 2008, for a total of \$75.00.

7. The Commission holds that, because the Tenants demanded a rent rebate of \$300.00 per month in their Complaint, the Commission is unable to award a rebate in excess of \$300.00 per month. Therefore, the Commission awards the Tenant a rebate of \$10.65 from July 14, 2007, through August 16, 2007 (for the defective windows) and a rebate of \$5.16 from August 16, 2007, through August 17, 2007 (for the defective windows and the defective air conditioning) and a rebate of \$1,935.38 (for the loss of the third bedroom), for a total award of \$1,951.19.

7. The Commission finds that the Tenants have not proven that the Landlord's breach of its obligations giving rise to the defective tenancies discussed above constitute a constructive eviction and, therefore, the Commission holds that the Tenants were not entitled to terminate their tenancy on February 28, 2008. However, the Landlord had a duty to mitigate its damages as a result of the

Tenants' vacating the property prior to the end of their lease term. Md. Code Ann., Reap Prop. Art., § 8-207. Ms. Gick admitted that the Property was in poor condition, that the Landlord had not maintained the Property after the Tenants moved out, and that the poor condition of the Property prevented the Landlord from reletting the Property. In addition, the Commission notes that \$1,850.00 is an unreasonably high rent given the Property's age, size, location and condition. The Commission further notes that, although the Tenants agreed to pay monthly rent of \$1,850.00 for the Property, at the time the Tenants entered into their lease, they and the Landlord believed that the Property had three legal bedrooms, rather than two, and that the loss of the bedroom reduced the value of the tenancy by at least \$300.00. Therefore, the Commission finds that the Landlord failed to make reasonable efforts to mitigate its damages by failing to maintain the Property after the Tenants vacated and attempting to charge an unreasonable rent. Therefore, the Commission holds that the Tenants are not liable to the Landlord for the rent for the Property after February 2008, and shall require the Landlord to refund to the Tenants \$1,942.50 for the rent and late fee the Tenants paid for March 2008.

The Commission notes that, had the Landlord made good faith efforts to rent the Property, including listing the Property for a reasonable rent and properly maintaining the Property after the Tenants vacated, then the Tenants would have been liable to the Landlord for the rent (less the reduction in rent because of any remaining defective tenancies) and the cost of reletting the Property, including the cost of the maintenance for which the Tenants were responsible under the lease and the cost of locating a new tenant.

**V. ORDER.**

Accordingly, it is this 8th day of July 2008, by the City of Takoma Park Commission on

Landlord-Tenant Affairs,

ORDERED, that Ferroe Mervyn, Ann Scarborough, and Marydale Realty Management, Inc, shall pay to Jacques and Veronique Bure, \$3,893.69.00.

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

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Juan Jose Canales, Presiding Commissioner

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Catherine C. Wakelyn, Commissioner

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Joanne Hill, 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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