

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

Jose Muñoz  
8314 Roanoke Ave., Apt. 1  
Takoma Park, MD 20912

Tenant

v.

8314 Roanoke Avenue, L.L.C.  
c/o Reden Management/Eric Denchfield  
11912 Maple Ave., Suite C  
Rockville, MD 20852

Landlord

COLTA Case No. 08-4T

**OPINION AND ORDER**

**I. INTRODUCTION.**

On February 15, 2008, Jose Muñoz (“Tenant”), the tenant of 8315 Roanoke Avenue, Apartment 1, Takoma Park, Maryland, filed a Complaint with the City of Takoma Park, Commission on Landlord-Tenant Affairs (“COLTA” or “Commission”) against the landlord of the rental property located at 8314 Roanoke Avenue. Exhibit 2. The Owner/Landlord of the property is 8314 Roanoke Avenue, L.L.C., and the Manager/Landlord pursuant to the Tenant’s lease is Reden Management. Exhibit 3. This Order shall refer to the Owner/Landlord and Manager/Landlord as the “Landlord.” The Tenant’s Complaint alleged that the Landlord caused a defective tenancy by requiring him to pay for gas service for his Apartment. The Commission docketed the Complaint as Case No. 08-4T. The

Landlord did not respond to the Complaint.

The Commission has jurisdiction over this matter 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 24, 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.”<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 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

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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.

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 April 1, 2007. Exhibit 4. His monthly rent started at \$705.00 and increased to \$835.00 on April 1, 2008. Exhibit 3.

The Tenant's lease provides that the Tenant is responsible for paying the utility bills for electric, telephone, and cable service and that the Landlord is responsible for gas and water and sewer service. Exhibit 3. The 2005 Annual Rent Report for the property, completed by the prior owner of the Property, indicated that all utilities for the Property were paid by the landlord and included in the rent. Exhibit 13. There is no evidence that the Landlord completed the process necessary to transfer responsibility for any utility payments to the Tenant.

The Tenant testified that Eric Denchfield, the owner of 8314 Roanoke Ave., LLC, and Yancy Suber, the property manager, verbally told him that he would be responsible for different utilities. In November 2007, Washington Gas cut off service to his Apartment. The Tenant testified that he had the gas bill put under his name at the suggestion of the City of Takoma Park Housing Office. In December 2007, Washington Gas sent him a bill for \$291.44, for March 2007 through November 2007. Exhibit 6.

The Tenant testified that he made payments of \$275.00 and \$279.00 to Washington Gas, and that a charitable organization made a payment of \$220.00 to prevent Washington Gas from terminating his service. The Tenant submitted a Washington Gas bill for the Apartment dated June 3, 2008, that indicated a total amount due of \$1,053.30. Exhibit 16.

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

1. The Commission finds that the Tenant's tenancy in the Apartment commenced on April 1, 2007, and converted to a month-to-month tenancy by operation of law on April 1, 2008.

2. The Commission finds that the lease requires the Landlord to pay for gas service for the Apartment. The Commission finds that the landlord failed to pay for gas service to the Apartment, and therefore caused a defective tenancy. The Commission finds that the Tenant paid \$549.00 to Washington Gas and, as of June 3, 2008, was indebted to Washington Gas in the amount of \$1,053.30, as a result of the defective tenancy. The Commission holds that the Landlord is liable to the Tenant for \$1,602.30 for the payments the Tenant made to Washington Gas and the charges the Tenant has incurred as a result of transferring the gas service to his name.

**V. ORDER.**

Accordingly, it is this 15<sup>th</sup> day of July 2008, by the City of Takoma Park Commission on Landlord-Tenant Affairs,

ORDERED that the Tenant is authorized to withhold \$1,602.30 from future months' rent for the Apartment; and

ORDERED that the Tenant deduct the amount of any future Washington Gas charges for the Apartment from his monthly rent for the Apartment; and

ORDERED that if the Tenant vacates the Apartment prior to withholding a total of \$1,602.30 in rent payments, then, within 14 days after written demand from the Tenant, the Landlord shall pay the Tenant all of the remaining balance of the liability to Washington Gas incurred by the Tenant.

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Robert Liebreich, Presiding Commissioner

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Peter Munger, 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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