

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

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

Tenant

v.

COLTA Case No. 08-11T

8312 Flower Avenue, L.L.C.
Richard E. Denchfield, Resident Agent/Member
11912 Maple Avenue, Suite C
Rockville, MD 20852

and

Reden Management
11912 Maple Avenue, Suite B
Rockville, MD 20852
and
953 East-West Highway, Suite 1A
Takoma Park, MD 20912

Landlord

OPINION AND ORDER

I. INTRODUCTION.

On May 1, 2008, Cassie Lynott (“Tenant”), a tenant of 8312 Flower Avenue, Apartment 5, Takoma Park, Maryland, (“Apartment”) filed a Complaint with the City of Takoma Park, Commission on Landlord-Tenant Affairs (“COLTA” or “Commission”) against Reden

Management/Eric Denchfield. This Complaint was docketed as Cassie Lynott v. 8312 Flower Avenue, LLC, c/o Reden Management/Eric Denchfield, Case No. 08-11T. At the time of the hearing, the Commission amended the case caption as set forth above. 8312 Flower Avenue, LLC (“Landlord/Owner”) is the owner of the rental property located at 8312 Flower Avenue, Takoma Park, MD 20912 (“property”). Reden Management (“Landlord/Agent”) manages the property and is the Landlord/Agent for the property 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 she was being charged a monthly rent that was higher than the rent amount allowed for her apartment by the City’s rent stabilization law. As relief, the Tenant requested a refund of all rent overcharges from the beginning of the tenancy. 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 the Tenant’s complaint on July 1, 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. Section 6.24.080.J.

II. APPLICABLE LAW.

Section 6.16.160 prohibits landlords from imposing an illegal rent. Under the City’s rent stabilization law, landlords may only increase the rent for an apartment one time in a 12-month period and the rent increase is limited to the annual rent stabilization allowance. *See* Sections 6.20.010.B and 6.20.060.

III. EVIDENTIARY AND HEARING SUMMARY.

The Tenant testified that she and her spouse, Napoleon Bongaman, entered into a one-year lease for the Apartment with the Landlord commencing on June 1, 2007, for a monthly rent of \$850.00. Exhibit 3. The lease states that the rent for the Apartment will increase to \$900.00 per month on May 31, 2008, but the Tenant testified that she paid \$850.00 per month rent for June and July 2008, and also that she has not received written notice of the rent increase which must be given at least one month but no more than two months before the effective date of the rent increase. *See* Exhibit 3 (Alternative A - Rent Escalation) and Section 6.20.060.D.

The Tenant testified that Jean Kerr, Housing Specialist with the City's Office on Landlord-Tenant Affairs, had contacted her as part of a random survey of rental properties in order to determine whether the rent being paid for the Apartment was in accordance with the amount permitted to be charged under the City's rent stabilization law. *See* Exhibits 5 and 6. Ms. Kerr also provided the Tenant with a copy of the 2006 Annual Rent Report for the property signed by Eric Denchfield for the Landlord on January 17, 2007. Exhibit 10. According to this Rent Report, a rent increase for the Apartment, from \$680.00 to \$695.00 per month, was taken by the Landlord on October 1, 2005. City of Takoma Park law restricts the frequency of rent increases to one increase in a 12-month period and the amount of the rent increase to the annual rent stabilization allowance. Sections 6.20.010.B and 6.20.060. Thus, no rent increase for the Apartment could be imposed until October 1, 2006, which was one year after the last rent increase reported on the 2006 Annual Rent Report.

The Commission took judicial notice of the rent stabilization allowance established by the City's Department of Housing and Community Affairs ("Department") pursuant to Section 6.20.060.A. This rent stabilization allowance was as follows:

2.8% for the period of July 1, 2006 through June 30, 2007;
2.5% for the period of July 1, 2007 through June 30, 2008; and
4.7% for the period of July 1, 2008 through June 30, 2009.

Applying this rent stabilization allowance to the allowable rent for the Apartment means that the Landlord was permitted to increase the rent for the Apartment by 2.8% on October 1, 2006, from \$695.00 per month to \$714.00 per month. The next allowable rent increase for the Apartment would have been on October 1, 2007; namely, a 2.5% rent stabilization allowance rent increase from \$714.00 to \$732.00 per month.

Tenant testified that she has paid rent of \$850.00 per month to the Landlord, as stated in the Lease, since June 2007 through and including July 2008. As relief, the Tenant requested a refund of all rent paid for the Apartment in excess of the allowable rent and also that the rent for the Apartment be rolled back to the lawful rent amount. *See* Section 6.24.090.B.2.

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, and that Tenant has paid rent to the Landlord of \$850.00 per month for the months of June 2007 through July 2008.

2. The Commission finds that the allowable rent for the Apartment was \$714.00 per month for June 2007, the first month of the Tenant's tenancy in the Apartment, through September 2007. Accordingly, the Commission finds that Tenant was overcharged \$544.00 for June 1, 2007 to September 30, 2007 (\$850.00 rent charged less \$714.00 allowable rent = \$136.00 rent overcharge per month x 4 months).

3. The Commission finds that the allowable rent for the Apartment increased by the 2.5% rent stabilization allowance as of October 1, 2007, from \$714.00 per month to \$732.00 per month. As the rent for the Apartment may be increased only one time in a 12-month period, the Commission

finds that the allowable rent for the Apartment, for the period of October 2007 through September 2008 is \$732.00 per month.

4. Based on an allowable monthly rent of \$732.00, the Commission finds that Tenant was overcharged \$1,180.00 for the period of October 1, 2007 through July 1, 2008 (\$850.00 rent charged less \$732.00 allowable rent = \$118.00 rent overcharge per month x 10 months).

5. The Commission concludes that the Tenant has paid \$1,724.00 rent in excess of the allowable rent to the Landlord for the period of June 2007 through July 2008 (\$544.00 rent overcharge for June 1, 2007 through September 30, 2007 (4 months) and \$1,180.00 rent overcharge for October 1, 2007 through July 31, 2008 (10 months)).

6. The Commission finds that the Landlord may increase the rent for the Apartment by the 4.7% rent stabilization allowance, effective October 1, 2008, if the Landlord gives the Tenant at least two months written notice of the rent increase, in the form and manner prescribed in the Department regulations. *See* Section 6.20.060.D. If proper notice of this rent increase is given to the Tenant, then the monthly rent for the Apartment can be increased to \$766.00 (\$732.00 per month + 4.7%). If Tenant does not receive such written notice of the rent increase, then no increase may be made until and unless proper notice is given.

7. The allowable remedies when the Commission finds that the Landlord has imposed an illegal rent include, but are not limited to, an order authorizing the tenant to begin paying the lawful rent immediately, an order to the landlord to refund excess moneys paid by the tenant for the illegal rent; and/or an order authorizing the tenant to withhold from the next months' rent payment, an amount equal to the illegal rent imposed by the Landlord. Section 6.24.090.B.2.

V. ORDER.

Upon consideration of the verified complaint, exhibits, and any evidence presented at the

hearing in this case, it is this 15th day of July, 2008, by the City of Takoma Park Commission on Landlord-Tenant Affairs:

ORDERED, that the allowable rent for the Apartment is \$732.00 per month; and

ORDERED, that the Tenant is authorized to withhold \$1,724.00 from the next months' rent for the Apartment, such \$1,724.00 being the amount Tenant paid in excess of the allowable rent to the Landlord for the period of June 2007 though July 2008, as follows:¹ \$0.00 rent due for August 2008; \$0.00 rent due for September 2008; and \$260.00 rent due for October 2008; and

ORDERED, that in the event the Tenant vacates the Apartment prior to withholding a total of \$1,724.00 in rent payments, then, within 30 days after written demand from the Tenant, the Landlord shall pay the Tenant all of the remaining balance of the excess rent money paid by the Tenant for the illegal rent.

Steve Wasser, Presiding Commissioner

Joanne Hill, Commissioner

Kelly A. O'Brien, 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.

¹ Tenant's lease provides for an air conditioning fee of \$35.00 per month for May - September. The authorization for rent withholding in this Order does not apply to the air conditioning fee.