

CITY OF TAKOMA PARK  
COMMISSION ON LANDLORD-TENANT AFFAIRS

Lynette Myers  
3803 Deep Hollow Way  
Mitchellville, MD 20721

Tenant

v.

COLTA Case No. 08-10T

Rashid Mkakaile  
8316 Roanoke Ave., Apt. 3  
Takoma Park, MD 20912

Landlord/Owner

**OPINION AND ORDER**

**I. INTRODUCTION.**

On January 8, 2008, Lynette Myers (“Tenant”), a former tenant of 8316 Roanoke Avenue, Apartment 1, Takoma Park, Maryland (“Apartment”), filed a Complaint with the City of Takoma Park Commission on Landlord-Tenant Affairs (“COLTA” or “Commission”) against Rashid Mkakaile (“Landlord”), the owner of the rental property located at 8316 Roanoke Avenue (“Property”). This Complaint was docketed as COLTA Case No. 08-10T.

The Tenant’s Complaint alleged that the Landlord failed to return her security deposit of \$1,500.00 and sought a refund of her 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 June 17, 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, to return the remaining security deposit to the tenant and provide 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). In the event of a transfer of ownership of a rental property, “[a]ny successor in interest is liable to the tenant for failure to return the security deposit, together with interest, as provided in this section.” *Md. Code Ann.*, Real Prop. Art., §8-203(d)(4).

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

The Tenant entered into a lease for the Apartment with the former owner of the Property commencing on January 1, 2006, and terminating on January 31, 2007, and paid a security deposit of \$1,500.00. Exhibit 4. At the expiration of the lease term, the Tenant remained in the Apartment as a month-to-month tenant. By letter dated November 15, 2007, the Tenant notified the Landlord and the former owner of the Property that she intended to vacate the Apartment on December 15,

2007, and requested the return of her security deposit. Exhibit 3-1.

The Tenant testified that she moved out of the Apartment and returned the keys to the Landlord on December 15, 2007. She testified that she paid her rent<sup>1</sup> and left the Apartment in good condition. She testified that the landlord did not return any portion of her security deposit and never provided her with a list of damages withheld from her security deposit. The Tenant testified that she tried to call the Landlord several times and that the Landlord's wife would answer the phone and indicate that the Landlord was out of the state.

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

1. The Commission finds that the Tenant entered into a lease for the Apartment with the Landlord's predecessor in interest, with the tenancy commencing on January 1, 2006, and terminating on January 31, 2007. Exhibit 4. The Commission finds that the tenancy converted to a month-to-month tenancy by operation of law on February 1, 2007.

2. The Commission finds that the Tenant paid a security deposit of \$1,500.00 at the time Tenant commenced occupancy of the Apartment on January 1, 2006. Exhibit 4.

3. The Commission finds that the Tenant gave written notice to the Landlord that she would be vacating the Apartment on or about December 15, 2007 (Exhibit 3-1), and that Tenant did vacate the Apartment on that date.

4. The Commission finds that the Tenant's \$1,500.00 security deposit has accrued

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<sup>1</sup> The Tenant submitted copies of her rent checks for November and December 2007, which had been deposited by the Landlord. Exhibits 3-2 and 3-3. The amount of the checks, \$627.00, differed from the monthly rent of \$750.00 stated in the lease. The Tenant testified that the Housing Office discovered that the rent stated in the Tenant's lease was illegal and had required that the rent be reduced to \$627.00.

interest at the statutory rate of 3% per annum from January 1, 2006, through the present. This period includes five six-month periods at interest of \$22.50 for each six-month period, amounting to a total of \$112.50 interest due through June 2008. The Commission further finds that simple interest of 3% per annum for each six month period (*i.e.*, \$22.50) after June 30, 2008, 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.<sup>2</sup> 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. Therefore, the Commission awards the Tenant punitive damages of \$1,500.00. The Commission notes that, if the Landlord did not receive the Tenant's security deposit from the former owner of the Property, then the Landlord can pursue recovery of the deposit from the former owner. The Commission further notes that the Landlord, rather than the Tenant, was in the position to obtain the

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<sup>2</sup> Although the Tenant did not notify the Landlord of her new address in her notice to vacate, assuming that the Tenant did not otherwise provide the Landlord with her new address, the Landlord should have sent any correspondence and refund check to the Apartment, as the Tenant's last known address, so that the post office could forward it to the Tenant.

transfer of all security deposits, at the time he purchased the property, which is why the law renders new owners liable to tenants for their security deposits.

**VI. ORDER.**

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

ORDERED, that the Landlord shall pay to the Tenant \$1,500.00 as a refund of the Tenant's security deposit, plus accrued interest of \$112.50, plus \$1,500.00 in punitive damages, for a total of \$3,112.50; 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 \$22.50 interest on the security deposit.

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Arthur Wohl, Presiding Commissioner

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Dorothy Clennon, Commissioner

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Jarrett Smith, 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.