

CITY OF TAKOMA PARK  
COMMISSION ON LANDLORD-TENANT AFFAIRS

Jayne Somers  
209 16<sup>th</sup> St., SE  
Washington, DC 20003

Tenant

v.

Luis Q. Mendez, Rosa E. Mendez,  
and Richard Mendez  
15636 Twin Valley Ct.  
Silver Spring, MD 20906

Landlord/Owner

COLTA Case No. 07-67T

**OPINION AND ORDER**

**I. INTRODUCTION.**

On December 10, 2007, Jayne Somers (“Tenant”), the former tenant of the single family home located at 6637 Eastern Avenue, Takoma Park, Maryland (“Property”), filed a Complaint with the City of Takoma Park Commission on Landlord-Tenant Affairs (“COLTA” or “Commission”) against Luis and Richard Mendez (collectively, “Landlord”), the owners of the Property. This Complaint was docketed as COLTA Case No. 07-67T.

The Tenant’s Complaint alleged that the Landlord improperly failed to return a portion of her security deposit and that the Landlord caused a defective tenancy by failing timely to correct

several physical defects in the Property<sup>1</sup> and by breaching the terms of the lease. The Tenant sought a refund of the remainder of her security deposit and \$2,300.00 in damages to compensate her for the defective tenancy.

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 August 19, 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. Luis and Richard Mendez were present 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).

The *Takoma Park Code* defines a defective tenancy as “any condition in a rental facility that

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<sup>1</sup> The Tenant also alleged that the Landlord attempted to evict her at the end of her tenancy in retaliation for her filing of a complaint with the Montgomery County Code Enforcement Office. This issue is moot because the Tenant voluntarily vacated the Property on September 30, 2007.

constitutes a violation of the terms of the lease, the Landlord-Tenant Relations Law, or the Property Maintenance Code.”<sup>2</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. Defective tenancy complaints must be filed within one year of the date of the occurrence. § 6.24.060.C.

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

The Tenant entered into a lease for the Property commencing on July 1, 2006, and terminating on June 30, 2007, and paid a security deposit of \$1,900.00. Exhibit 4. After the expiration of the lease term, the Tenant remained in the Property as a month-to-month tenant. In an email dated August 23, 2007, the Tenant notified the Landlord that she intended to vacate the property on September 23, 2007. Exhibit 3-12. The Tenant vacated the property on September 30, 2007, after the Landlord advised her that she would be responsible for a full month’s rent for September.

Luis Mendez, in a letter dated October 19, 2007, advised the Tenant that he had deducted

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<sup>2</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.

\$125.00 from her security deposit for having the house cleaned and \$90.00 for a late fee for September 2007. The Landlord enclosed a check for \$1,742.00 for the remainder of the Tenant's security deposit plus accrued interest. The letter was postmarked November 15, 2007, and the Tenant received the letter on November 16, 2007. The Tenant testified that she had the Property professionally cleaned before she moved out, including having the carpets professionally cleaned, and that she should not be charged a late fee for September because the Landlord had initially advised her that her September rent would be prorated to reflect her intended September 23 move out date, she timely paid the prorated rent, and paid the remainder of the rent within one week of receiving notice that she was responsible for paying the entire month's rent. The Tenant presented a receipt for the carpet cleaning and photographs showing the condition of the Property when she moved out. Exhibits 3-15 to 3-21.

The Tenant alleged that the Landlord failed timely to correct several defects in the Property that she discovered at the commencement of her Tenancy.

The Tenant alleged that she discovered that the fireplace was not working in November 2006. She testified that the house filled with smoke when she attempted to start a fire in the fireplace. She testified that the furnace was supposed to vent through the chimney but that it was venting into the house because of the clogged chimney. She testified that she felt dizzy one day, which she attributed to the furnace venting into the house. The Landlord had the chimney cleaned on March 3, 2007. Exhibit 3-10.

The Landlord testified that the Tenant's failure to open the flu caused the smoke to fill the house when she attempted to start a fire and that the fire department tested the property for carbon monoxide and that the results were negative.

The Tenant alleged that the pipes in the Property froze five times, commencing from

January through March 2007. She asserted that the frozen pipes were caused by nonexistent insulation, holes in the exterior walls, a drafty back door, and inadequate circulation around the radiator in the kitchen. Exhibit 3-9. She testified that she called the County to complain about the problem. A Housing Code Inspector discovered 14 Code violations on February 16, 2007, and gave the Landlord until March 20 to abate the violations. Exhibit 6. The Tenant asserted that the cited violations were the cause of the frozen pipes. She testified that the Landlord did not correct the causes of the frozen pipes until spring 2007, after the weather had warmed up. The Code Enforcement documents confirm that the Landlord had not corrected the violations as of March 20, 2007. Exhibit 6.

Richard Mendez testified that the frozen pipes were caused by unusually cold weather. The Landlord's handy man, Arthur Newsome, testified that he twice came to the Property to thaw the pipes and apply insulation and that he came as soon as the Landlord called him. The Tenant testified that Mr. Newsome did not come until the fourth time the pipes had frozen.

The Tenant's Complaint alleged that the Landlord breached her lease by not delivering the property in clean condition, not maintaining the plumbing in the basement bathroom, entering the house without proper notice, retaliating against her, and not notifying her of a change of address, which resulted in three lost rent checks.

The Tenant did not indicate when the rent checks were returned and conceded that the Landlord had reimbursed her for fees relating to the lost checks. Richard Mendez testified that he advised the Tenant at the commencement of her tenancy that the basement was not ready for occupancy and that it could be used for storage only. He testified that the Tenant nonetheless continued asking him to finish the basement.

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

1. The Commission finds that the Tenant entered into a one-year lease for the Property commencing on July 1, 2006, and terminating on June, 30, 2007. Exhibit 4. The Commission finds that the tenancy converted to a month-to-month tenancy by operation of law on July 1, 2007.

2. The Commission finds that the Tenant paid a security deposit of \$1,900.00 on or about June 6, 2006. Exhibit 4.

3. The Commission finds that the Tenant gave written notice of her intent to vacate the Property to the Landlord on August 23, 2007, and that the Tenant vacated the Property on September 30, 2007.

4. 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. Because the Tenant vacated the Property on September 30, 2007, the Landlord was required to return the remainder of her security deposit and provide her with an explanation of any withholdings by November 14, 2007. The Commission finds that the Landlord mailed the tenant a refund of \$1,742.00 and a written explanation of the damages claimed and costs incurred on November 15, 2007, and that the Tenant did not receive the correspondence until November 16, 2007. Accordingly, the Commission holds that the Landlord forfeited its right to withhold any portion of the Tenant's security deposit.

5. The Commission finds that the Tenant's \$1,900.00 security deposit accrued simple interest at the statutory rate of 3% per annum, accrued at six month intervals, from June 6, 2006, through November 15. This period includes two six-month periods, with interest of \$28.50

accruing for each six-month period, amounting to a total of \$57.00 interest due through November 16, 2007. Therefore, the Commission finds that the Tenant is entitled to a further refund of her security deposit in the amount of \$215.00 (\$1,900.00 + \$57.00 - \$1,742.00).

6. The Commission holds that the Tenant's defective tenancy claims regarding the defects existing at the commencement of her tenancy in July 2006, and the inoperable chimney, which she discovered in November 2006, are barred by the one-year statute of limitations because she did not file her Complaint until December 10, 2007. *See* § 6.24.060.C.

7. The Commission holds that the Landlord is not liable to the Tenant for the alleged defective tenancy relating to the venting of the furnace into the house. The Tenant appears to be asserting that the furnace was venting into the house from December 2006 through March 8, 2007, when the Landlord had the chimney cleaned. However, the Tenant claims to have experienced dizziness on only one occasion. The Commission believes that, had the furnace been venting into the house for more than three months, the Tenant would have experienced additional ill effects. In addition, the Commission finds it incredible that the Tenant would continue to stay in the house with the heat running if she believed that the furnace was venting into the house. The Commission also finds Richard Mendez's uncontradicted testimony that the fire department tested the Property for carbon monoxide and did not detect a problem to be credible. Accordingly, the Commission finds that the Tenant failed to prove the existence of the alleged defect.

8. The Commission holds that the Landlord is not liable to the Tenant for the alleged defective tenancy relating to frozen pipes. The Commission finds the Landlord's testimony that the freezing of the pipes was caused by unusually cold weather, rather than by any defective condition of the property, to be credible. The Commission finds that the Housing Code Inspector's February 16, 2007, inspection of the Property did not reveal any violations that would have caused the

plumbing to freeze. Rather, the violations, such as such as drafty windows and doors and holes in the interior walls, would have caused increased heating costs but would not have caused the plumbing to freeze. Exhibit 6.

**VI. ORDER.**

Upon consideration of the complaint, exhibits, and any evidence presented at the hearing in this case, it is this 15th day of September 2008, by the City of Takoma Park Commission on Landlord-Tenant Affairs:

ORDERED, that the Landlord shall pay to the Tenant \$215.00 as a refund of the Tenant's security deposit; and

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

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Jarrett Smith, Presiding Commissioner

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Arthur Wohl, Commissioner

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Kelly 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 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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