

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

Sharon M. Mickey  
7801 Takoma Avenue  
Takoma Park, MD 20912

Tenant

v.

Jerome & Sherelyn Ernst  
7805 Takoma Avenue  
Takoma Park, MD 20912

Landlord

COLTA Case No. 08-13T

**OPINION AND ORDER**

**I. INTRODUCTION.**

On July 22, 2008, Sharon M. Mickey (“Tenant”), Tenant of a single-family house at 7801 Takoma Avenue, Takoma Park, Maryland (“House”), filed a Complaint with the City of Takoma Park, Commission on Landlord-Tenant Affairs (“Commission”) against Jerome Ernst and Sherelyn Ernst (“Landlord”), owners of the House. *See* Exhibit 3. The Tenant’s Complaint alleged that the Landlord had failed to repair various defects in the condition of the House. These defects included, but were not limited to, chipping and flaking paint, doors and windows which do not open or close properly, bug (millipede) invasion, bedroom ceiling damage due to a water leak, and a smelly unusable basement. The Complaint further claims that as a result of a basement flood, valuable

personal papers, memorabilia, and collectibles that Tenant had stored in the basement were ruined. As relief, the Tenant requested a rent rebate of \$800.00 per month beginning with the lease commencement in November 2007, and continuing to the lease expiration in October 2008. The Landlord filed a response to the Complaint on July 31, 2008, denying liability and enclosing various items of correspondence with the Tenant and Montgomery County Code Enforcement regarding property conditions, along with repair invoices and photographs of the House. *See Exhibits 8 - 13.*

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 September 23, 2008. The Tenant was present at the hearing and testified, along with a witness, Vienice Sytles, who had visited the House and observed some of the defective conditions. Both Landlords also were present and testified. 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.**

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.” Section 6.04.030. A complaint of a defective tenancy may be filed with the Commission 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. Section 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 the Commission finds that a landlord has caused a defective tenancy, then the Commission is empowered to award the tenant his or her actual monetary damages sustained as a result of the

defective tenancy. Section 6.24.090.B.1.a.i.

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

The Tenant entered into a one year lease for the House dated November 1, 2007, and ending on October 31, 2008, for a monthly rent of \$1,795.00. *See* Exhibit 4. The Tenant raised a number of issues with conditions of the House which she alleged were not remedied by the Landlord and constituted a defective tenancy. The Tenant stated that she was paying rent of almost \$1,800.00 per month for a 2-bedroom, 1-bath house and, at that price, she expected the House to be immaculate. The major issues raised by the Tenant are set forth below.

#### **Basement Flooding.**

Tenant testified that the basement of the House flooded in early May 2008, after heavy rainfall, and this flooding damaged invaluable historic newspapers, art books, scrapbooks, pictures, and other memorabilia which she had stored on the basement floor in cardboard boxes. The Tenant displayed some of these damaged papers and personal items to the Commission and provided her estimate of their monetary value. *See* Exhibit 3-4.

The Landlord responded that the unfinished basement did flood after a torrential rain storm, leaving water on the floor of the front half of the basement; however, the Landlord also testified that, during their ownership of the House, the basement had never flooded before. To prevent a recurrence of the flooding, the Landlord cleared all leaves near the basement entryway, placed more dirt against the basement front wall, and installed a longer gutter extension. The Landlord also painted the inside basement brick wall with dry lock. The Landlord stated, and the Tenant did not dispute, that there had been no other or further instances of basement flooding.

#### **Bedroom Ceiling Leak.**

In early July 2008, there was a water leak in the bedroom ceiling which damaged a portion of the ceiling. The Tenant called a repair person who found that a clogged drain line from the air conditioning unit had caused water to overflow the unit and leak through the ceiling. The repair person cleaned out the drain and condensate pan, which stopped the leak. The Landlord was out-of-town at the time of this ceiling leak. A friend of the Landlord, whom the Landlord had authorized to handle matters relating to the House in the Landlord's absence, was contacted and told the Tenant that he would try to arrange for the ceiling to be repaired over the weekend. However, the Tenant apparently told him that she did not wish to have a repair person in the House over the July 4<sup>th</sup> holiday weekend; rather, she wanted the ceiling repairs made after 5:00 pm on the following Monday, July 7<sup>th</sup> or Tuesday, July 8<sup>th</sup>. *See Exhibit 12.*

On July 16, 2008, after the Landlord returned to town, Adams Heating & Air Conditioning inspected the situation and concluded that a clogged condensate drain from the air conditioner unit had caused water to overflow and leak through the ceiling. The air conditioning system had been installed in October 2007 and, according to the Landlord and HVAC person from Adams Heating & Air Conditioning, there had been no issues with the air conditioning system before this occurrence. *See Exhibit 11-10.* A secondary overflow switch in the unit drain system was installed to prevent future overflows and the water-damaged ceiling was repaired on that date.

The Tenant complained that the ceiling remained water-stained and damaged for several weeks after the leak occurred, which was unacceptable given the high rent she was paying for the House.

### **Bugs (Millipedes).**

The Tenant testified to a recent and continuing bug infestation in the House, specifically, millipedes. The Tenant said that millipedes were all over the back of the house, den, bathroom and that she almost drank a millipede that had crawled into a drinking glass next to her bed. She said that she had spread boric acid around the House in an attempt to get rid of the many bugs. The Tenant also reported that she was scared to turn off the lights in her bedroom because the darkness attracted bugs; that bugs came up the drains; and that the bug-millipede infestation was preventing her from use and enjoyment of the House. Tenant's witness confirmed seeing many millipedes and other insects in the House and being repulsed by them.

The Landlord denied that millipedes were "all over every day." Landlord pointed out that this is an older House on a lot with many trees and that some bugs are inevitable. The Landlord said they had raked up leaves and debris next to the house in order to prevent insect nests from developing in the leaf mulch. The Landlord also spread insecticide on the ground near the foundation and pointed the brick work to close off possible bug entry into the House through the exterior. The Landlord sprayed the basement for bugs and provided the Tenant with a "bug bomb" to fumigate the House. Landlord said they offered to have the House professionally exterminated, but the exterminator told them that all boric acid would have to be removed first, and Tenant would not agree to remove the boric acid or to clear her items off the window ledges.

### **General Conditions.**

The Tenant complained that many doors and windows in the House stick and are hard to open. The Tenant stated that she had to use a hammer to open several windows. In addition, Tenant reported chipping and flaking paint, particularly on the windows at the front of the house and side and back porches, and she worried that the flaking paint contained lead. She also said there was a

gap in the back door which leaks air. After Montgomery County Code Enforcement inspected the property and noted this as a violation, the Landlord finally straightened the door, but not until about late July 2008. The Tenant also complained that there was no built-in dishwasher or disposal, and the kitchen sink merely had a rubber stopper on a chain, rather than an automatic drain opener and closer. She said that there was a persistent chemical smell in the basement; that she didn't have full use of the garage because the Landlord had items stored in the garage; that the garage door was heavy and hard to open and close; and that her vehicle antenna had broken off after the Landlord's workers, in the course of replacing the garage roof, had moved the rope that she had been using to determine where she should stop her vehicle in the garage. Towards the latter portion of the tenancy, after relations between the Tenant and Landlord deteriorated badly, the Tenant also complained that the Landlord was not giving her proper notice before entering the House for repair work and other purposes.

The Landlord explained that the House was an older house located in the Takoma Park Historic District, with a large yard, garage and porches. At all times during the Tenant's occupancy of the House, the Landlord testified that the House has had a valid rental license from the City of Takoma Park. Further, in or about mid-December 2007, approximately one month after Tenant moved in, the House had been inspected by Montgomery County Code Enforcement and no property maintenance code violations were found. The Landlord denied that any of the conditions alleged by the Tenant constituted a defective tenancy or a violation of the lease. He stated that neither a built-in dishwasher nor a disposal was required equipment and that Tenant had rented the Housing with full knowledge of its amenities. *See also* Exhibit 4 (Lease at paragraph 14, Acceptance of Premises). The Landlord denied that there was flaking and peeling paint or that there was lead paint in the House. The Landlord indicated that a licensed lead paint inspector had inspected the House on

October 22, 2007, and that the property had passed and met all Maryland Department of the Environment lead paint certification criteria. *See Exhibit 8-7.*

The Landlord described repair efforts at the House and provided invoices for numerous minor repairs that the Landlord performed in response to Tenant's demands. These included, but were not limited to, installing gutter guards; replacing the garage roof; replacing the washing machine hose and adding a clamp; providing a dehumidifier for the basement; restringing kitchen and bath window weights and sanding window frames to make the windows easier to open and close; fixing the latch on the back porch door; tightening loose door knobs throughout the house; and replacing faucet seals and washer in the bathroom. On June 16, 2008, a Montgomery County Housing Code Inspector noted 13 violations at the House. The Landlord asserted that these violations were minor and were corrected in a reasonable time. Montgomery County Department of Housing and Community Affairs reinspected the House on August 15, 2008, and found that the House was in compliance with the housing code requirements. *See Exhibit 7.*

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

1. The Commission finds that the Landlord was not negligent and, therefore, is not responsible for the water damage to Tenant's personal property, papers and memorabilia resulting from the basement flood following a period of heavy rainfall. Based on the Landlord's unrebutted testimony, the basement had not previously flooded and it has not flooded since the May 2008 incident. The Tenant's Lease, in paragraph 24, specifically provides that the Landlord "shall not be liable for any loss or damage to property of Tenant caused by vermin or by rain, stormwater or steam that may leak or flow from any part of the premises or any source except where such loss or damage results from Landlord's negligence, deliberate act, or violation of any applicable law." *See Exhibit 4.*

2. The Commission does not find that the water leak that occurred in the ceiling of

Tenant's bedroom at the house was a defective tenancy. According to the testimony at the hearing and the letter from Adams Heating & Air Conditioning, there were no prior issues or symptoms with the air conditioner that would have put the Landlord on notice that there was a clogged condensate drain line leading to the overflow and the ceiling water leak. The cause of the leak apparently was remedied on July 1, 2008, the same day the leak was discovered. Although it took approximately 15 days after the ceiling leak occurred for the ceiling damage to be repaired, the Commission does not find this to be an unreasonable delay or to entitle the Tenant to a reduction in her rent.

3. The Commission does not find a defective tenancy due to the bug-millipede infestation alleged by the Tenant. The Commission finds that the Landlord has made reasonable and timely efforts to control and eliminate millipedes and other insects in and around the House. These efforts included spreading insecticide near the foundation, pointing brick work to close off harborage points, and providing a "bug bomb" for Tenant to fumigate the House.

4. The Commission does not find that any of the items listed in the Evidentiary Summary portion of this Opinion and Order under General Conditions constitute a defective tenancy and finds that the Landlord met their obligations under the *Takoma Park Code*, including the property maintenance code provisions, and the Lease for the House. To the extent that any of the General Conditions of the House violate the property maintenance code, the Commission finds that any such violations are minor; are not serious sanitary, health or safety issues; and do not rise to the level of a defective tenancy. The Commission finds that when repairs to the House were required, the Landlord made reasonable, good-faith, and prompt efforts to rectify the condition or defect. Finally, the Commission notes that this an older house located in the Takoma Park Historic District, not new construction, and that older houses and are seldom, if ever, in "immaculate" condition.

## **V. ORDER.**



Accordingly, it is this 19th day of November 2008, by the City of Takoma Park Commission on Landlord-Tenant Affairs,

ORDERED, that the Commission finds in favor of the Landlord, Jerome Ernst and Shereyn Ernst, and against the Tenant, Sharon M. Mickey, on all claims and denies the Tenant's request for a rent rebate of \$800.00 per month for the House.

---

Catherine C. Wakelyn, Presiding Commissioner

---

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 ("appeal") will not stay a final Opinion and Order unless so ordered by a court of competent jurisdiction.

V:\StaffShare\Website\COLTA.Case.Request.FINAL.ORD.7.01.15\Mickey v. Ernst 2008-13T.wpd