

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

Fidel Flores  
7904 Kennewick Avenue, Apt. 202  
Takoma Park, MD 20912

Tenant

v.

Adebisi Showunmi  
10600 Blackstone Avenue  
Cheltenham, MD 20623

Landlord

COLTA Case No. 08-17T

**OPINION AND ORDER**

**I. INTRODUCTION.**

On September 12, 2008, Fidel Flores (“Tenant”), a tenant of 7904 Kennewick Avenue, Apt. 202, Takoma Park, Maryland (“Apartment”) filed a Complaint with the City of Takoma Park, Commission on Landlord-Tenant Affairs (“COLTA” or “Commission”) against Adebisi Showunmi (“Landlord”). This Complaint was docketed as Fidel Flores v. Adebisi Showunmi, Case No. 08-17T.

The Tenant’s Complaint alleged that he was being charged a monthly rent that was higher than the rent amount allowed for his apartment by the City’s rent stabilization law. As relief, the Tenant requested that the Landlord rollback the rent to the legal amount and for reimbursement of all rent overcharges. *See* Exhibit 2. The Landlord responded to the Complaint by asking for a hearing.

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 November 18, 2008. Both the Tenant and the Landlord were present at the hearing and testified. Jean Kerr, Housing Specialist with Office on Landlord-Tenant Affairs, Department of Housing and Community Development, City of Takoma Park also 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.**

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. Annual rent stabilization increases that a landlord did not assess a current tenant in a particular year may not be recouped from that tenant in a later year. However, these authorized annual rent increases may be "banked" and charged to a new tenant provided the apartment became vacant because the tenant voluntarily vacated the apartment or the landlord terminated the tenancy for cause. *See* Sections 6.20.060.A.3 and 6.20.070.

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

The Tenant testified that he signed a lease for the Apartment with the Landlord commencing on February 7, 2000, for a monthly rent of \$650.00. Exhibit 3. The Tenant testified that he paid \$650.00 per month rent for the Apartment until July 1, 2006 when the Landlord increased the rent to \$700.00 per month. In January 2008, the Tenant received a notice from the Landlord informing him that, effective March 1, 2008, the rent for the Apartment would increase to \$800.00. *See* Exhibit 6. The Tenant then paid \$800.00 per month rent from March 1, 2008. He testified that he is current in his rent payments and has paid rent for the Apartment through November 30, 2008.

The Tenant testified that Jean Kerr, Housing Specialist with the City's Office on Landlord-Tenant Affairs, sent him a letter in June 2008, requesting information about the rent he paid for the Apartment in order to determine whether the rent was in accordance with the amount permitted to be charged under the City's rent stabilization law. He provided the requested rent information to the City. *See Exhibit 8.* A few months later he met with the City's landlord-tenant staff to review the rent for the Apartment. When the Tenant discovered that the rent he was paying was higher than the amount allowed by City law, he filed this Complaint with the Commission. The Tenant also provided the Commission with a copy of his lease and copies of various money order receipts for his rent payments. *See Exhibits 3 and 10-15.*

The Landlord testified that she had not increased the Tenant's rent increase for a period of more than six years – from February 2000 until July 2006. Then, beginning with the rent for July 2006, the Landlord raised the Tenant's rent by \$50.00, to \$700.00 per month. Due to the increased cost of her gas, water, taxes, and mortgage interest, the Landlord further increased the rent for the Apartment to \$800.00 per month effective March 1, 2008. *See Exhibit 6.*

The Landlord testified that she pays for gas, water, trash collection, property taxes, and repairs for the apartment building at 7904 Kennewick Avenue, Takoma Park, Maryland ("Property") and that all of these expenses had gone up drastically. She complained that the Tenant often paid his rent late and that he did not pay late fees, as required by the lease for the Apartment. She said that it was not fair that the Tenant could pay only \$650.00 per month for six years and that she would now be prohibited from increasing the rent at a time when her expenses for the Property have gone up so much. The Landlord said that she does not make any money from the Property and was just trying to cover her expenses. She opined that it was "wrong" for the Tenant to have filed a Complaint with the Commission and that the Tenant should put himself in her shoes. The Landlord said that \$717.00 per

month rent – the amount the City’s landlord-tenant office has told her is the legal rent for the Apartment – does not cover the utilities, property taxes, mortgage payments, and other costs of the Property.

The Landlord did not explain why she had not charged annual rent stabilization allowance increases to the Tenant for the first six years of the Tenant’s occupancy of the Apartment. She also stated that she had never filed a rent increase petition of any kind with the Commission. If such a rent increase petition had been filed and granted, in accordance with the requirements of the Takoma Park Code, then the Landlord could increase the yearly rent by more than the rent stabilization amount.

Jean Kerr, Housing Specialist with the City Office on Landlord-Tenant Affairs, then testified. She explained that part of her duties involve monitoring landlord’s compliance with the City’s rent stabilization law. Towards that end, she makes random checks of rental properties each year in order to determine whether the rents being paid are in accordance with the rents permitted to be charged under the City’s rent stabilization law. Ms. Kerr said that the Tenant had responded to one of her rent surveys, which led to the discovery that the rent paid by the Tenant for months after June 2006 exceeded the lawful amount.

Ms. Kerr testified that Landlords are required to file Annual Rent Reports each year and to disclose the rents being charged at the rental facility and any rent increases imposed during the reporting period. She went over the Annual Rent Reports for the Property that had been filed by the Landlord and a summary she had prepared of rents, rent overcharges, and legal rent for Tenant’s Apartment. *See* Exhibits 18, 19, 20, and 21.

The Commission took judicial notice of the rent stabilization allowance established by the City 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.

Ms. Kerr testified that applying this rent stabilization allowance to the rent for the Apartment meant that the Landlord was permitted to increase the rent for the Apartment by 2.8% on July 1, 2006, from \$650.00 per month to \$668.00 per month. In fact, the Landlord increased the rent for the Apartment to \$700.00 on July 1, 2006. The next allowable rent increase for the Apartment would have been on July 1, 2007; namely, a 2.5% rent stabilization allowance rent increase from \$668.00 to \$685.00 per month. Effective March 1, 2008, the Landlord raised the monthly rent for the Apartment to \$800.00, but this increase was imposed less than less than twelve months after the last allowable rent increase on July 1, 2007. On July 1, 2008, the rent could have increased by 4.7%, from \$685.00 to \$717.00 per month. The actual rent paid by the Tenant for March 1, 2008 through November 30, 2008 was \$800.00 per month, an overcharge of \$83.00 per month. Ms. Kerr's conclusion was that the Tenant was entitled to a refund of \$1,379.00 from the Landlord for rent overcharges for the period of July 1, 2006 through November 30, 2008, and that the lawful rent for the Apartment was \$717.00 per month for the period of June 30, 2009. *See* Exhibit 21 and calculation titled "7904 Kennewick Avenue, Unit 202 - Fidel Flores" attached to this Opinion and Order as Exhibit A and made a part of it by reference.

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

1. The Commission finds that the Tenant's tenancy in the Apartment commenced in February 2000; that the Tenant paid rent to the Landlord of \$650.00 per month from February 2006 through June 2006, \$700.00 per month from July 2006 through February 2008, and \$800.00 per month from March 2008 through November 2008.

2. The Commission finds that the allowable rent for the Apartment was \$668.00 per month for July 2006 through June 2007. Accordingly, the Commission finds that Tenant was overcharged \$384.00 for July 1, 2006 to June 30, 2007 ( $\$700.00$  rent charged less  $\$668.00$  allowable rent =  $\$32.00$  rent overcharge per month x 12 months =  $\$384.00$ ).

3. The Commission finds that the allowable rent for the Apartment increased by the 2.5% rent stabilization allowance as of July 1, 2007, from \$668.00 per month to \$685.00 per month. The Landlord increased the rent for the Apartment effective March 1, 2008 to \$800.00 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 March 2008 through June 30, 2008 was \$685.00 per month.

4. Based on an allowable monthly rent of \$685.00, the Commission finds that Tenant was overcharged \$580.00 for the period of July 1, 2007 through June 30, 2008 ( $\$700.00$  rent charged from July 1, 2007 through February 29, 2008, less  $\$685.00$  allowable rent =  $\$15.00$  rent overcharge per month x 8 months =  $\$120.00$  plus  $\$800.00$  rent charged from March 1, 2008 through June 30, 2008, less  $\$685.00$  allowable rent =  $\$115.00$  rent overcharge per month x 4 months =  $\$460.00$ ).

5. The Commission finds that the allowable rent for the Apartment increased by the 4.7% rent stabilization allowance as of July 1, 2008, from \$685.00 per month to \$717.00 per month. As the actual rent being charged by Landlord for the Apartment for the months of July 2008 through and

including the month of this Opinion and Order was \$800.00 per month, the Commission finds that the Tenant was overcharged \$415.00 for July 1, 2008 through November 30, 2008 (\$800.00 rent charged less \$717.00 allowable rent = \$83.00 rent overcharge per month x 5 months = \$415.00).

6. The Commission concludes that the Tenant has paid \$1,379.00 rent in excess of the allowable rent to the Landlord for the period of July 1, 2006 through November 30, 2008.

7. The Commission finds that the Landlord may increase the rent for the Apartment by the annual rent stabilization allowance, effective July 1, 2009, provided 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. The annual rent stabilization amount equals the percentage increase in the Consumer Price Index-All Urban Consumers, All Items, Washington-Baltimore, from March of the first year to March of the next year and, thus, the 2009 rent stabilization increase amount is not known at this time. The City calculates the annual rent stabilization allowance and provides notice of the allowance to all landlords. Section 6.20.060.A.1.

8. 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.

9. The Commission is not without sympathy for this Landlord, who did not charge a rent increase to the Tenant for the Apartment for more than six years. However, the Commission is required to reach the result set forth in this Opinion and Order by the express provisions of Chapter 6.20, Rent Stabilization, of the *Takoma Park Code*. The Commission notes that if the Landlord had charged the annual rent stabilization increases to the Tenant during each year of the Tenant's

occupancy of the Apartment, then the legal rent for the Apartment would now be \$790.00, close to the \$800.00 per month that the Landlord has been charging to Tenant for the Apartment since March 2008. The City's rent stabilization law does not permit the Landlord to charge unused rent stabilization increases to the current Tenant of the Apartment. *See* Sections 6.20.060.A.3 and 6.20.070.A. If the Landlord believes that the allowable rent for the Property is not sufficient to pay the expenses of the Property and provide her with a fair return, then the Landlord has the right to file a petition for a rent increase in order to obtain a fair return. Section 6.20.090.



**V. ORDER.**

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

ORDERED, that the allowable rent for the Apartment is \$717.00 per month; and

ORDERED, that the Tenant is authorized to withhold \$1,379.00 from the next months' rent for the Apartment, such \$1,379.00 being the amount Tenant paid in excess of the allowable rent to the Landlord for the period of July 1, 2006 though November 30 2008, as follows: \$0.00 rent due for December 2008, and \$55.00 rent due for January 2009; and

ORDERED, that in the event the Tenant vacates the Apartment prior to withholding a total of \$1,379.00 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.

---

Catherine C. Wakelyn, 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 will not stay a final Opinion and Order unless so ordered by a court of competent jurisdiction.

**7904 Kennewick Avenue, Unit #202 - Fidel Flores**

1. Tenant moved in the unit 2/7/2000. Rent charged (per lease) = **\$650/month**

2. Per 2006 Rent Report for (7/1/05 - 6/30/06 reporting period)

6/30/06 rent was	\$650
7/1/06 rent stabilization increase (2.8%)	<u>+ 18.20</u>
Allowable rent as of 7/1/06	<b>\$668.20 (rounded to \$668)</b>

Allowable rent as of 7/1/06 = **\$668/month**

3. Tenant's rent increased on 7/1/06 from \$650 to \$700

Rent charged 7/1/06 - 6/30/07	\$700
Less allowable rent	<u>- 668</u>
Rent overcharge/month	\$ 32/mo.
	<u>x 12 mos.</u>
	<b>\$384 rent overcharges for 7/1/06 - 6/30/07</b>

4. Rent overcharges for 7/1/07 through 6/30/08

Allowable rent 7/1/06 - 6/30/07	\$668
7/1/07 rent stabilization increase (2.5%)	<u>+ 16.70</u>
Allowable rent as of 7/1/07	<b>\$684.70 (rounded to \$685.00)</b>

Allowable rent as of 7/1/07 = **\$685/month**

Rent charged 7/1/07 - 2/29/08	\$700
Less allowable rent	<u>- 685</u>
Rent overcharge/month	\$ 15
	<u>x 8 mos.</u>
	<b>\$120 rent overcharges for 7/1/07 - 2/29/08</b>

5. Tenant's rent increased on 3/1/08 to **\$800/month** which is more than one increase within a 12 month period. Next rent increase should not occur before 7/1/08.

Rent charged 3/1/08 - 6/30/08	\$800
Less allowable rent	<u>- 685</u>
Rent overcharge/month	\$115
	<u>x 4 mos.</u>
	<b>\$460 rent overcharges for 3/1/08 - 6/30/08</b>

6. Rent overcharges for 7/1/08 through 11/30/08 = 5 months

Allowable rent 7/1/08 - 6/30/09	\$685
7/1/08 rent stabilization increase (4.7%)	+ <u>32.19</u>
Allowable rent as of 7/1/08	<b>\$717.19 (rounded to \$717)</b>

Allowable rent as of 7/1/08 = **\$717/month**

Rent charged	\$800
Less allowable rent	<u>- 717</u>
Rent overcharged/month	\$ 83
	<u>x 5 mos.</u>
	<b>\$415.00 rent overcharges - 7/1/08 - 11/30/08</b>

**Summary of Mr. Flores' rent overcharges**

\$ 384.00	for 7/1/06 - 6/30/07
\$ 120.00	for 7/1/07 - 2/29/08
\$ 460.00	for 3/1/08 - 6/30/08
<u>\$ 415.00</u>	for 7/1/08 - 11/30/08
<b>\$1,379.00</b>	<b>total</b>

**Legal rent from 7/1/06 - 11/30/08**

7/1/06 - 6/30/07	\$668
7/1/07 - 6/30/08	\$685
7/1/08 - 6/30/09	\$717