

Joanne R. Gordon)	
)	
Tenant)	
)	
v.)	Case No. 08-16T
)	
Starlington Simms)	
)	
_____ Landlord)	

ORDER

I. INTRODUCTION.

On September 10, 2008, Joanne Gordon (“Tenant”), the tenant of 7807 Lockney Avenue, Takoma Park, Maryland (“Property”), Apartment 102 (“Apartment”), filed a Complaint with the City of Takoma Park, Commission on Landlord-Tenant Affairs (“Commission”) against Starlington Simms, the owner of the Property (“Landlord”). Exhibit 3. The Tenant’s Complaint alleged that the Landlord was responsible for a defective tenancy because of a rodent infestation.¹ The Tenant requested unspecified compensation for a reduction in service. The

¹ The Tenant also alleged that the Landlord caused a defective tenancy because of defective locks, a deglazed bathtub, damage to her bedroom ceiling, a leak in the kitchen, and the conduct of her neighbors, including one neighbor that welds in his apartment that causes sparks to fly into her bedroom, and neighbors putting trash on her side of the porch and putting broken glass in her garbage can. However, the Tenant indicated at the hearing that she was only seeking relief from the alleged rodent infestation. Accordingly the Commission will not address these issues.

The Tenant also indicated that her Complaint involved an improper rent increase. The Tenant did not present any evidence or argument in support of this claim. In addition, the record indicates that the Landlord attempted to increase the Tenant’s rent without providing two

Landlord filed a response to the Complaint on September 30, 2008. Exhibit 6. The Landlord asserted that it made a timely good faith effort to correct all of the defects for which he received notice and that the Tenant's refusal to allow him access to the Apartment and excessive clutter in the Apartment impeded the correction of the defects.

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 January 13, 2009. The Tenant and the Landlord appeared at the hearing. April Tabor, Esq., represented the Landlord. The Tenant, as the party filing the Complaint, has the burden of proof by a preponderance of the evidence. § 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.”² § 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

months' notice as required by the *Takoma Park Code*, but that, when the Housing Office advised him of the notice requirement, he agreed to delay the imposition of the rent increase. Therefore, the Commission will not address this issue.

² 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.

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. HEARING AND EVIDENTIARY SUMMARY.

The Tenant moved into the Apartment on January 1, 2003. The Tenant's initial lease provided for a one-year tenancy with a monthly rent of \$675.00. Exhibit 4.

At the outset of the hearing, the Commission asked the Tenant to clarify what remedy she was seeking, and the Tenant explained that she was asking the Commission to require the landlord to eradicate the rodent infestation in her Apartment. She testified that her Apartment has been infested with mice for many years and that, despite her complaints, the infestation continues. She testified that after she filed the Complaint, someone began frequently dropping heavy objects on her ceiling. She testified that the mice entered her Apartment through holes in the building. During an inspection of the Apartment on May 6, 2008, the Montgomery County Code Enforcement Officer Lynn McCreary noted a rodent infestation and directed that everything be removed from the cabinets and shelving and the furniture be moved away from the walls to check for points of entry and that the landlord provide proof of professional extermination and eliminate a hole in the bathroom and eliminate all gaps between the wall trim and floor. Exhibit 3.

The Tenant stated that she had submitted documents that were not included in the record. According to the letter from Moses Wilds of the Office of Landlord-Tenant Affairs to the Tenant dated September 18, 2008, he did not include certain documents that she had submitted because

they related to matters that were barred by the one-year statute of limitations. Exhibit 5. The Tenant also complained that she did not receive all of the exhibits until shortly before the hearing. The Commission notes that it is common practice for the Landlord-Tenant Office to mail a copy of the record to the parties and the Commission Panel shortly before the hearing.

Montgomery County Code Enforcement Officer Lynn McCreary testified that she inspected the property on May 27, 2008, and found old mouse droppings. She testified that she did not believe there to be a “live” infestation. She testified that the Landlord promptly responded to the code violation notices that she issued. She testified that the Tenant hindered the Landlord’s efforts to treat the Apartment because the Tenant would not allow the Landlord’s exterminator to use certain chemicals and did not move her possessions to enable the exterminator to treat the entire Apartment. She testified that the Tenant “had lots of things” in the Apartment. She testified that, during her last inspection of the Apartment, the Tenant was satisfied that the Landlord had closed all of the holes that might allow mice to enter.

Before Officer McCreary testified, the Tenant said that she had hurt her hand and could not move her possessions, and therefore had asked that the exterminator use a treatment method that would not require her to move them. Following Officer McCreary’s testimony, the Tenant said that she had moved the furniture for the exterminator. The Tenant denied having an excessive amount of personal property in her Apartment and denied that the Landlord had sealed all of the holes that allowed mice to enter the Property.

The Landlord’s exterminator, Paul Gasaway, testified that he goes to the Property once or twice a month and that he has not seen fresh mouse droppings. He testified that the last time he saw any rodent in the Apartment was when he saw one mouse in November or December 2008. The Tenant testified that the mouse was caught on November 28, 2008. Mr. Gasaway testified

that the sighting of a single mouse is not indicative of an infestation. He testified that there are many mice in the neighborhood and that mice can enter a property by running through an open door. He testified that he started treating the Property in January 2007, and that he started treating the Property at least monthly in May 2008. He testified that the last time he visited the Property before the hearing was December 23, 2008, and that there were no signs of an infestation. He testified that he maintains one box style mouse trap outside of the Property, and that he believes that treatment of the Property on a quarterly basis would be appropriate going forward.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1. The Commission finds that the Tenants' tenancy in the Property commenced on January 1, 2003, and that it converted to a month-to-month tenancy by operation of law on January 1, 2004.

2. The Commission finds, based on the testimony of Code Enforcement Officer McCreary and the Landlord's exterminator, Paul Gasaway, that the Landlord timely made good faith efforts to remedy the alleged infestation and has eliminated any infestation that may have existed. The Commission further finds, based on the testimony of Officer McCreary and Mr. Gasaway and the assertions of the Landlord, that the Tenant hindered the Landlord's efforts to address the alleged infestation, because of the condition of her Apartment, her unwillingness to move her belongings to facilitate the extermination efforts, and her refusal to allow access to her Apartment.

V. ORDER.

Accordingly, it is this 25th day of February 2009, by the City of Takoma Park Commission on Landlord-Tenant Affairs, ORDERED that the relief requested by the Tenant is

DENIED.

Jarrett K. Smith, Presiding Commissioner

Joanne Hill, Commissioner

Arthur Wohl, 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.