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

Hampshire Towers Tenant Association 7333 New Hampshire Avenue, Apt. 514 Takoma Park, MD 20912 Complainant v. Tenacity 7333 New Hampshire Avenue LLC c/o Tenacity Group 2008 Hillyer Place, NW Washington, DC 20009 and Dreyfuss Management 4800 Montgomery Lane, 10th Floor Bethesda, MD 20814 Respondents	COLTA Case No. 09-08TA

OPINION AND ORDER

I. INTRODUCTION.

On May 12, 2009, the Hampshire Towers Tenant Association ("Tenant Association"), on behalf of the tenants of several rental units in the Hampshire Towers apartment buildings located at 7333 and 7401 New Hampshire Avenue, Takoma Park, Maryland ("Property"), filed a Complaint with the City of Takoma Park, Commission on Landlord-Tenant Affairs ("Commission") against the Property owner, Tenacity 7333 New Hampshire Avenue LLC, and property manager, Dreyfuss

Management (individually and collectively "Landlord"). Exhibit 3. The Tenant Association's Complaint alleged that the Landlord had caused a defective tenancy because the tenants of units equipped with balconies have been denied access to their balconies since 2004, and because the air-conditioning system at 7401 New Hampshire was inoperative in July 2008. The Tenant Association also challenged a notice to vacate issued by the Landlord on April 23, 2009, requiring certain tenants of 7333 New Hampshire Avenue to vacate the property by June 30, 2009. As relief, the Tenant Association requested that the Commission award each affected tenant $150.00 per month as damages for the loss of use of their balconies, award each affected tenant a one time payment of $120.00 as damages for the loss of air conditioning in July 2008, and order that the notice to vacate be rescinded. The Landlord filed an Answer to the Complaint on May 26, 2009. The Landlord challenged the Tenant Association's authority to represent the tenants, objected to the lack of specificity in the Complaint, challenged the City of Takoma Park's authority to interfere with its termination of the tenants' tenancies, and denied liability for the alleged defective tenancies. Exhibit 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 6.24.070, the Commission held an emergency public hearing on June 2, 2008. The Co-Presidents of the Tenant Association, Michelle Robinson and Margaret Buraimoh attended the hearing on behalf of the Tenant Association. The Tenant Association was represented by Henry Liu, Esq. Michael Lefkowitz attended on behalf of the Landlord. The Landlord was represented by Roger Luchs, Esq. The Tenant Association, 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 actual monetary damages sustained as a result of the defective tenancy. Section 6.24.090(B)(1)(a)(i).

Section 6.16.150(A)(2) of the *Takoma Park Code* governs the issuance of notices to vacate without cause. That section provides as follows:

> A landlord wishing to terminate a tenancy without stating a reason or a cause and to repossess a rental unit in the case of a month-to-month tenancy or any tenancy for a term of less than one year shall give the tenant, prior to the rent due date, 2 months' written notice to vacate.

Section 6.16.070(A), enacted on April 28, 2003, requires that landlords offer new tenants an initial lease term of one year unless the landlord has good cause for offering a shorter lease term. Section 6.16.070(D) requires landlords to offer tenants that have a one year lease term the opportunity to renew the lease for an additional year unless certain conditions are met. If the landlord fails to offer the tenant the opportunity to renew the lease for one year and does not satisfy the conditions excusing it from offering the renewal, the tenant has the right to assert that it has a new one-year tenancy. Section 6.16.070 provides, in its entirety, as follows:

> 6.16.070 Lease term and renewal requirements.
>
> A. All leases shall be offered for an initial one-year term unless reasonable cause

exists for offering a lease term of less than one year.

B. A tenant may reject an offer of a one-year lease and agree to a term of other than one-year.

C. If an initial lease is for a term of other than one year, the lease or an addendum to the lease must show either that an offer of a one-year lease was made to the prospective tenant and the tenant requested a different term or state the landlord's reasonable cause for offering a lease term of less than one year. This lease provision shall be separately initialed or signed by the landlord and the tenant.

D. The landlord shall offer the tenant the opportunity to renew a lease of one-year or more for an additional term of one year at least 2 months prior to the end of each lease term unless:

1. The landlord has given the tenant notice to vacate, except that the landlord shall not give a 2-month no fault notice to vacate at the expiration of the initial one-year lease term; or

2. The tenant has given the landlord notice of intent to vacate; or

3. At least 2 months before the end of the lease term, the landlord has provided the tenant with a written statement of the landlord's reasonable cause for offering a lease term of less than one year.

E. If a landlord fails to offer the tenant a one-year lease renewal without stating in writing the landlord's reasonable cause for offering a term of less than one year, as required by subsections (C) or (D)(3) of this section, then, at the sole option of the tenant, the tenant shall be presumed to have a one-year lease.

F. "Reasonable cause" shall include those situations in which:

1. It would create a hardship for a landlord to enter into or renew a one-year lease.

2. The landlord is selling the rental facility and settlement on the sale is to occur within a one-year period.

3. The landlord intends to occupy the rental unit or make it available for use by a family member. Any landlord utilizing this provision shall not lease the rental unit during the 12-month period beginning on the date of recovery of possession.

4. The landlord is making alterations or renovations or is conducting substantial rehabilitation to a rental unit or rental facility which cannot safely or reasonably be accomplished while the rental unit or rental facility is occupied. Any displaced tenant shall have a right to lease the rental unit upon completion of such work.

III. EVIDENTIARY SUMMARY AND DISCUSSION.

A. Objections to the Complaint

As a preliminary matter, the Landlord raises several objections to the Tenant Association's Complaint.

First, the Landlord argues that the Tenant Association does not have the authority to represent the tenants of 7401 New Hampshire Avenue because the Tenant Authorization of Representation Form executed by the tenants advises the tenants that "[b]y signing this form, you agree you are authorizing the Hampshire Towers Tenant Association at 7333 New Hampshire Avenue to represent you in a Complaint with the Commission on Landlord Tenant Affairs." The Commission rejects the Landlord's argument because the Hampshire Towers Tenant Association includes and represents tenants from both 7333 and 7401 New Hampshire Avenue, Exhibit 5, and tenants from 7401 New Hampshire executed the Authorization of Representation Form, Exhibit 6 at pp. 11-17.

Second, the Landlord argues that the Complaint is invalid because the Tenant Authorization of Representation Form does not indicate that each tenant read the Complaint before signing the authorization and may have been signed by tenants that did not receive a notice to vacate and did not suffer from the alleged defective tenancies. The Commission rejects this argument because, under section 20 of the Commission's Regulations, complaints filed by a Tenant Association need only "be signed by an officer of the Tenant Association and accompanied by a written 'Authorization of Representation' . . . which identifies each tenant on whose behalf the Complaint is filed." The Commission finds that the Complaint comports with the regulations as it was signed by the Tenant Association's Co-President, Margaret Buraimoh, Exhibit 3, and was accompanied by a completed Tenant Authorization of Representation Form, Exhibit 6.

Third, the Landlord objects to the Complaint because the Complaint does not indicate "just who actually filed the complaint." A review of the Complaint reveals that it was filed by the Tenant

Association, through its Co-President, on behalf of the "individual tenants who have authorized the Association to file this complaint." Exhibit 3.

Fourth, the Landlord objects to the Complaint because the Complaint does not name every tenant who actually received a notice to vacate or is complaining about his or her balcony. With respect to the notice to vacate, the Commission notes that the Landlord knows to which tenants it issued the notice to vacate and that the Commission's ruling on this issue will have no bearing on tenants that did not receive the notice. With respect to the balconies, the Commission notes that the Landlord itself closed the balconies and therefore knows which tenants were denied access to their balconies, and the Tenant Association requests an award of damages only to those tenants that were affected by the balcony closures.

B. Notice to Vacate

The Landlord purchased the Property in June 2006 and is in the process of converting the Property to a condominium facility. The Landlord asserts that all leases that were in effect at the time it purchased the Property expired without renewal. The Tenant Association did not present evidence indicating that any tenant had a written lease with a term of one year or more in effect at the time the Landlord issued the Notice to Vacate. In the only lease that the Tenant Association submitted as evidence, the tenancy commenced on August 1, 2004, and terminated on July 31, 2005. Exhibit 4.

The Tenant Association did not present any evidence that any of the tenants had exercised their option to assert a one-year lease prior to the implicit assertion in the Complaint. According to the 2008 Annual Rent Report for the Property, no tenancy commenced at the Property after February 1, 2006. Exhibit 15. Neither party presented evidence as to whether the Landlord provided any of the tenants with a written statement of good cause for not offering to renew their tenancies for an additional year. In a letter dated April 23, 2009 ("Notice to Vacate"), the Landlord notified several

tenants at the Property that their tenancies would terminate on June 30, 2009, and directed those tenants to vacate their units by that date. Exhibit 7.

The Tenant Association asserts that the Notice to Vacate violates section 6.16.070, apparently because it believes that one or more of the tenants that received the Notice have a right to assert a one-year lease because the Landlord failed to offer them a one-year lease renewal. The Landlord asserts that the Commission does not have the authority to prevent it from terminating the tenants' tenancies because the *Maryland Code* preempts the *Takoma Park Code*.

Based on the evidence in the record, the Commission finds that no tenant's tenancy commenced after February 1, 2006, that the Landlord failed to provide the tenants with a written statement of good cause as to why it would not offer one-year lease renewals, and that no tenant exercised an option to assert a one-year tenancy until May 12, 2009, when the Tenant Association filed the Complaint in this proceeding.

Whether any of the tenants may opt to assert a one-year lease and thereby preclude the Landlord from terminating their tenancies effective June 30, 2009, pursuant to the April 23, 2009, Notice to Vacate, depends, as a threshold matter, on whether the right to assert a one-year lease created by section 6.16.070(E) renews each year that a tenant remains in a rental unit without a landlord's offer of a one-year renewal or written statement of good cause for not offering a one-year renewal. The answer to this question depends on the meaning of subsections (D) and (E) of section 6.16.070, a matter of first impression for the Commission.

Upon consideration of the language of section 6.16.070, Commission holds that, when a landlord fails to offer a one-year lease renewal or provide the tenant with a written statement of good cause for not offering such a renewal, the tenant's right to assert a one year tenancy expires if not exercised within one year after the expiration of the tenant's last express one-year lease term.

Subsection D requires landlords to offer tenants "the opportunity to renew *a lease of one-year or more* for an additional term of one year at least 2 months prior to the end of each lease term." (Emphasis added.) Subsection (E) provides that, if a landlord has failed to offer a one-year renewal or provide a statement of good cause, "then, *at the sole option of the tenant*, the tenant shall be presumed to have a one-year lease." (Emphasis added.) The Commission finds that the lease term renewal and notice requirements of subsection (D) expressly apply only during tenancies of one year or more. The Commission finds that the phrase, in subsection (E), "at the sole option of the tenant, the tenant shall be presumed to have a one-year lease," requires the tenant affirmatively to opt for a new one-year lease term before the tenant may claim the benefit of (or be bound by) a one year lease. Therefore, until the tenant affirmatively asserts her right to a one-year lease term, the tenant remains a month-to-month tenant. Accordingly, we find that a tenant's right to assert an additional one-year lease term expires if not exercised within one year of the end of the tenant's last one-year tenancy.

In light of our interpretation of section 6.16.070, in the instant case, only tenants with a one-year lease term ending after June 30, 2008 (one year prior to the termination date under the Notice to Vacate) would be eligible to opt for an additional one year lease term that would give them a right to remain in their units after June 30, 2009. As noted above, no tenant's tenancy commenced later than February 1, 2006. Therefore any tenants wishing to claim their right to a one-year lease term renewal pursuant to section 6.16.070 would have to have done so no later than January 31, 2007, one year after the expiration of the last one year lease term. However, as noted above, no tenant attempted to exercise the right to claim a one-year tenancy until May 12, 2009. Consequently, the Commission finds that the Tenant Association has failed to prove that any of the tenants of the Property have anything other than a month-to-month tenancy. Therefore, the Commission holds that the April 23, 2009, Notice to Vacate constitutes a lawful notice to vacate to the tenants of the Property upon which

it was served.

Because we find that section 6.20.070 does not invalidate the Notice to Vacate at issue in the proceeding, the Landlord's preemption claim is moot.

C. Air Conditioning

The Tenant Association asserted that the Landlord caused a defective tenancy because the tenants of 7401 New Hampshire Avenue were without air conditioning in their units in July 2008. According to the Complaint, the tenants were without air conditioning for an average of nine days. Exhibit 3. The Tenant Association submitted a list of the tenants of 7401 New Hampshire Avenue that stated how long each tenant was without air conditioning. Exhibit 12. The list included claims ranging from three days to seven and a half weeks. The vast majority of the tenants claimed to have been without air conditioning from five to ten days. The Tenant Association Co-President testified that the entire building was without air conditioning for one week. The Tenant Association did not present any additional evidence regarding the length of time that each unit was without air conditioning and did not present any evidence that the Landlord received notice that any of the units remained without air conditioning after it repaired the system.

The Landlord conceded that the air-conditioning system at 7401 New Hampshire was inoperative for some period in July 2008. Mr. Lefkowitz testified that 7401 New Hampshire has a single air-conditioning system and that, when the system is broken, none of the units in the building have air-conditioning and, when the system is functioning, all of the units have air-conditioning. The Landlord argued that it was not liable for a defective tenancy as a result of the air-conditioning outage because it promptly repaired the air conditioner.

Under section 6.16.170(A), a landlord is liable for a defective tenancy if it fails to correct a defect or make good faith efforts to do so within one week of receiving notice of the defect. The

Commission holds that the Landlord is not liable for a defective tenancy because of the air-conditioner outage in July 2008. The Commission finds, based on the testimony of the Tenant Association Co-President and the claims of the tenants in Exhibit 12, that the Landlord repaired the air-conditioning system at 7401 New Hampshire within ten days after it first stopped working. This fact, on its face, indicates to the Commission that the Landlord made timely good faith efforts to repair the air-conditioning system. The Commission notes that it can be difficult to get an air-conditioning repair technician to make a service call within one week in July in the Washington, D.C., region, and that it can easily take several days to obtain the necessary parts and repair an air-conditioning system for a large apartment building. The Tenant Association did not present any evidence indicating that the Landlord failed to make timely good faith efforts to have the air conditioning repaired. Therefore, the Tenant Association has failed to prove that the Landlord did not make good faith efforts to repair the air-conditioning system within one week of learning that it was broken, and the Commission holds that the Landlord is not liable to the tenants for the air-conditioning outage in July 2008.

D. Balconies

The Tenant Association asserts that all of the balconies at the Property have been condemned since 2004. The Tenant Association submitted a letter from the former manager of the property to the tenants of 7333 New Hampshire Avenue, Apartment 514, dated October 8, 2004, advising them that their balcony was deemed unsafe and had been closed off. Exhibit 9. Montgomery County Housing Code Inspector Daniel McHugh inspected the Property on September 26, 2007, and made the following notation:

> Most patios/balconies appear to be leaning & may have crumbling areas. An engineer must evaluate the structural integrity of the patios/balconies and provide this office documentation of same as to what must be done to restore structural integrity.

Exhibit 10 at pp. 1-2.

Montgomery County Housing Code Inspector Lynn McCreary reinspected the Property on November 28, 2007, and found that the landlord had not yet repaired the balconies. Exhibit 10 at pp. 3-4.

The Landlord conceded that it had closed of the balconies at the Property after the Montgomery County inspectors had found them to be unsafe. Exhibit 13. The Landlord asserted several arguments as to why it is not liable to the tenants for the loss of use of their balconies.

First, the Landlord argues that all of the tenants are month-to-month tenants and that, by remaining in their units despite their knowledge of the defective balconies, the tenants have accepted their units "as is." The Commission does not find this argument persuasive. Section 6.16.050 of the *Takoma Park Code*, which governs the obligations of residential landlords, provides as follows:

> All landlords shall:
>
> A. Keep all areas of the rental facility, grounds, facilities, equipment and appurtenances in a clean, sanitary and safe condition;
>
> B. Make and bear the costs of all repairs and arrangements necessary to keep the rental unit in compliance with the Property Maintenance Code;
>
> * * *

The Code does not excuse landlords from maintaining and repairing rental facilities or rental units occupied by month-to-month tenants.

Second, the Landlord argues that the Tenant Association's claim regarding the balconies is barred by the one year statute of limitation set forth in section 6.24.060(C). The Commission also does not find this argument persuasive. Defective tenancy claims are analogous to continuing nuisance claims in that they involve the alleged maintenance of a nonpermanent condition that results in recurring injuries to the victim. A defective tenancy reduces the value of a tenant's tenancy each day that it remains uncorrected. Therefore, a defective tenancy claim, like a continuing nuisance claim, accrues anew each day that the defect remains uncorrected. Accordingly, the Commission

holds that the existence of defective condition of the balconies more than one year before the Tenant Association filed the Complaint does not bar the defective tenancy claim. Rather, section 6.24.060(C) prohibits the Tenant Association from recovering damages for injuries that occurred before May 12, 2008, one year before the filing of the Complaint on May 12, 2009.

Finally, the Landlord argues that it has already given rent credits to the tenants who were denied access to their balconies and that, by accepting the credits, the tenants "entered agreements to accept the credits as full compensation and cannot now seek additional compensation." Exhibit 13 at p. 5. The Landlord submitted a list of the units at the Property that had balconies that it had locked off, Exhibit 16, and a list of the units that indicated whether the tenants had accepted the credit, Exhibit 17. The Landlord did not, however, present any evidence that the tenants had agreed to release their defective tenancy claim. Therefore, the Commission rejects the Landlord's argument.

The Commission finds that the Landlord received notice of the defective balconies on or before September 26, 2007, when the Code Inspector noted the defect. The Commission finds that the fact that the defect remains uncorrected more than one year later, on its face, demonstrates that the Landlord failed to make good faith efforts to correct the defect within one week of receiving notice. Moreover, the Landlord did not present any evidence that it has ever made any effort to correct the defect or has any intent to do so in the future. Therefore, the Commission holds that the Landlord is liable for a defective tenancy.

The Tenant Association, in its Complaint, sought a rent refund of $150.00 per month commencing May 2008 and continuing until the Landlord restores access to the balconies. The Tenant Association did not explain the rationale for this request. At the hearing, the Tenants revised their request and sought a rent refund of $80.00 per month. Exhibit 18. The Tenant Association's request was based on a purported average monthly rent of $800.00 per unit, an average unit size of

700 square feet, and an average balcony size of 70 square feet (10% of the average unit). Exhibit 18.

The Landlord argued that, consistent with the credit it had offered to the tenants, the loss of access to the balconies diminished the value of the tenancies by $30.00 per month. Mr. Lefkowitz explained that he calculated the credit by taking the average square footage of the units with balconies and the average rent for those units to determine the average rent per square foot, multiplying the average rent per square foot by 60 (the average square footage of the balcony), and reducing the product by 1/3 (reasoning that balcony space is less valuable than indoor living space). He testified that the Landlord used computer-aided design to plot the size of the units and the balconies at the Property.

The Commission finds that the Landlord's data regarding the average unit size, rent per square foot, and balcony size to be more relevant and reliable than that presented by the Tenant Association. The Commission also finds the Landlord's methodology for calculating the diminution of value of the tenancies to be more reasonable than that proposed by the Tenant Association because we agree that balcony space is less valuable than indoor living space. Accordingly, the Commission finds that the balcony closures diminished the value of the affected tenancies by $30.00 per month and awards to the tenants of each unit with a locked-off balcony that authorized the Tenant Association to represent them in this proceeding a rent refund of $30.00 per month commencing on June 1, 2008 (the first rent due date within one year preceding the filing of the Complaint), and continuing through June 1, 2009, for a total of $390.00 per unit.[1] In addition, the monthly rent for

[1] Although the Landlord's counsel, in the Answer, asserted that the Landlord had already given rent credits to tenants that could not use their balconies, Mr. Lefkowitz testified that the tenants "will" get a credit, and Ms. Buraimoh testified that the Landlord, when it offered the credits, indicated that the tenants would not receive the credit until they moved out. Furthermore, the Landlord did not present any evidence that it had actually given the credit to any tenants.

those tenants units shall be reduced by $30.00 until the Landlord restores access to their balconies. The units where the tenants are entitled to the foregoing award of damages and rent reduction are set forth in Table 1, below.

Table 1

Tenants' Name	Building Number/Unit Number
Azeb Biru	7333-0209
Maria Najarro	7333-0309
Pascal & Adeline Agbodjogbe	7333-0314
B. Romero & L. Hernandez-Tapia	7333-0317
Ramon & Irma Rivera	7333-0318
Johnson Tangunyi & Mercy Ngawana	7333-0410
Zewdu Fekede	7333-0411
Tasha Fogarty (Parkes)	7333-0412
Getahun Kebede & Etenesh Ayele	7333-0414
Hady Tall	7333-0419
Fanaye Gebrekidan & Afework Dawit	7333-0709
Jose & Herbert Hernandez	7333-0714
Sheila Lamptey & Kewku Bissah	7333-0720
Bayo Workineh & Hirut Sewagegne	7333-0915
Yemane Giam	7333-1114
Edward & Leticia Badu	7333-1210
Julia Alvarado	7333-1212
Michael & Irene Joseph	7401-0309
Michelle & Matilda Robinson	7401-0519
Birguel Canos Rivera	7401-0603

Sinty Gillian & Hazel Aron	7401-0710
Linthia Wallace	7401-0801
Raquel Vassell	7401-0802
Landy Rodriquez	7401-0806
George McClain & J. Ayodeji	7401-0817
Rory Ramos & Maria Guevara	7401-0911
Albert Kamara & Alusine Munu	7401-0919
J. Ndjib & M. Ngo-Ndjip	7401-1102
J. Espinal, F & O Turcios	7401-1118

IV. ORDER.

Accordingly, it is this 18th day of June 2009, by the City of Takoma Park Commission on Landlord-Tenant Affairs,

ORDERED, that the relief requested by the Hampshire Towers Tenant Association is GRANTED in part and DENIED in part; and

ORDERED, that the Landlord shall pay to the tenants of the units identified in Table 1 of this Order $390.00 as damages for causing a defective tenancy by failing to maintain the balconies at the property in a safe condition; and

ORDERED, that monthly rent for the units identified in Table 1 of this order shall be reduced by $30.00 commencing on July 1, 2009, and continuing until the Landlord restores access to the balcony for those units

_____
Steve Wasser, Presiding Commissioner

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

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

Hampshire Towers Tenant Association 7333 New Hampshire Avenue, Apt. 514 Takoma Park, MD 20912 Complainant v. Tenacity 7333 New Hampshire Avenue LLC c/o Tenacity Group 2008 Hillyer Place, NW Washington, DC 20009 and Dreyfuss Management 4800 Montgomery Lane, 10th Floor Bethesda, MD 20814 Respondents	COLTA Case No. 09-08TA

ORDER ON RECONSIDERATION

I. INTRODUCTION.

The Commission issued an Opinion and Order in this Proceeding on June 18, 2009. On June 25, 2009, the Respondents, Tenacity 7333 New Hampshire Avenue, LLC, and Dreyfuss Management (hereinafter, collectively, "Landlord") filed a Motion for Reconsideration of the Opinion and Order. The Complainant, the Hampshire Towers Tenant Association, did not file a response to the Motion for Reconsideration.

The Commission hereby grants the Landlord's Motion for Reconsideration and makes the following findings of fact and conclusions of law.

II. DISCUSSION.

The Commission, in its Opinion and Order, found that the Landlord caused a defective tenancy by failing to make timely good faith efforts to repair several defective balconies at the Property. The tenants of the units at the Property with balconies had been denied access to their balconies since 2007. The Commission found that the loss of use of the balconies reduced the value of their tenancies by $30.00 per month, awarded the tenants of each unit with a closed-off balcony a rent refund of $30.00 per month commencing on June 1, 2008, and continuing through June 1, 2009, and ordered that the rent for those units be reduced by $30.00 per month commencing July 1, 2009, and continuing until the Landlord restores access to the balconies.

The Landlord, in its Motion for Reconsideration, argued that the Commission erred in failing to reduce the award of damages to certain tenants that had accepted a $30.00 monthly rent credit for May and June 2009 as compensation for the loss of use of their balconies.

In support of its Motion for Reconsideration, the Landlord attached copies of letters to the tenants of the Property with closed-off balconies dated April 21, 2009,[1] that made the following offer:

> As full and complete settlement with you for not being able to utilize your balcony we are agreeing to provide you with a credit against your rent in the amount of $30 per month until you have received a $30 per month credit for each month commencing on January, 2008 that you did not/do not have use of a balcony. This means that while your credit is in effect, your monthly rent would be reduced by $30.00.

[1] The Landlord, in its Motion for Reconsideration, incorrectly asserts that it submitted a copy of the April 21, 2009, letter to the Commission prior to the hearing, and that the letter was included as Exhibit 13 in the hearing record. In fact, Exhibit 13 was the Landlord's Answer to the Complaint, which the Landlord submitted without attachments and which did not even make a specific reference to the letter.

The credit, for the tenants that accepted it, was to commence on May 1, 2009. If the tenants vacated their units before they received the entire credit due to them, the Landlord promised to pay the remaining credit at the time it was required to return the tenants' security deposits or notify them that they were not entitled to a security deposit. The letter also stated, "Our agreement to provide you with the credit is conditioned with [sic] you remaining in compliance with the terms of your lease."

The Commission, in its Opinion and Order, found that the Landlord failed to prove that any of the tenants had agreed to release their defective tenancy claims regarding the balcony in exchange for the credit and found that the Landlord had failed to prove that any of the tenants had received the credit.

In its Motion for Reconsideration, the Landlord explained that the tenants that it identified in Exhibit 17 as having accepted the balcony credits were the tenants that had deducted $30.00 from their May and June 2009 rent payments. The Landlord requested that the Commission reduce the damages awarded to those tenants by $60.00.

The Commission agrees with the Landlord that the tenants that reduced their renal payments by $30.00 in May and June 2008 are not entitled to an award of damages for those months because they paid reduced rent commensurate with the reduction in value to their tenancies caused by the loss of access to their balconies. Accordingly, the Commission makes the award of damages set forth in table 1, below.

Table 1

Tenants' Names	Building Number/Unit Number	Award of Damages
Azeb Biru	7333-0209	$330.00
Maria Najarro	7333-0309	$330.00
Pascal & Adeline Agbodjogbe	7333-0314	$330.00
B. Romero & L. Hernandez-Tapia	7333-0317	$330.00
Ramon & Irma Rivera	7333-0318	$390.00
Johnson Tangunyi & Mercy Ngawana	7333-0410	$330.00
Zewdu Fekede	7333-0411	$330.00
Tasha Fogarty (Parkes)	7333-0412	$330.00
Getahun Kebede & Etenesh Ayele	7333-0414	$330.00
Hady Tall	7333-0419	$330.00
Fanaye Gebrekidan & Afework Dawit	7333-0709	$330.00
Jose & Herbert Hernandez	7333-0714	$390.00
Sheila Lamptey & Kewku Bissah	7333-0720	$330.00
Bayo Workineh & Hirut Sewagegne	7333-0915	$390.00
Yemane Gaim	7333-1114	$330.00
Edward & Leticia Badu	7333-1210	$330.00
Julia Alvarado	7333-1212	$390.00
Michael & Irene Joseph	7401-0309	$330.00
Michelle & Matilda Robinson	7401-0519	$330.00
Birguel Canos Rivera	7401-0603	$330.00
Sinty Gillian & Hazel Aron	7401-0710	$330.00
Linthia Wallace	7401-0801	$330.00
Raquel Vassell	7401-0802	$330.00
Landy Rodriquez	7401-0806	$330.00
George McClain & J. Ayodeji	7401-0817	$330.00

Rory Ramos & Maria Guevara	7401-0911	$330.00
Albert Kamara & Alusine Munu	7401-0919	$330.00
J. Ndjib & M. Ngo-Ndjip	7401-1102	$330.00
J. Espinal, F & O Turcios	7401-1118	$330.00

The Commission notes that its holding on remand is not based on the doctrine of accord and satisfaction, which would bar any tenants that had agreed to a settlement from making a claim for damages relating to the defective balconies.[2] Rather, our holding is based on the fact that the tenants that paid the reduced rent for May and June 2009 are not entitled to an award of damages for those months.

III. ORDER.

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[2] As the relief requested by the Landlord is inconsistent with its assertion of the affirmative defense of accord and satisfaction, a ruling on the issue is not essential to this Order on Remand. However, the Commission notes that the Landlord has failed to prove the existence of an accord and satisfaction. The Court of Special Appeals of Maryland explained the doctrine of accord and satisfaction as follows:

> "Accord and satisfaction is a method of discharging a contract or cause of action, whereby the parties agree to give and accept something in settlement of the claim or demand of the one against the other, and perform such agreement, the 'accord' being the agreement, and the 'satisfaction' its execution or performance."

Air Power, Inc. v. Omega Equipment Corp., 54 Md. App. 534, 538, 459 A.2d 1120, 1123 (1983) (quoting 1 C.J.S., Accord and Satisfaction, § 1).

In this case, the Landlord has failed to prove the existence of an accord. The Commission notes that the Landlord's April 21, 2009, letter stated that "[o]ur agreement to provide you with the credit is conditioned with [sic] you remaining in compliance with your lease." In light of the fact that the tenants could not satisfy this condition precedent to the agreement until after the termination of their tenancies, the Landlord has not reached a binding accord with the tenants. Even assuming that the Landlord reached a binding accord with the tenants that began paying reduced rent in May 2009, the Landlord has not satisfied the accord because it has not paid the tenants the outstanding balance of the credit.

Accordingly, it is this 9th day of July 2009, by the City of Takoma Park Commission on Landlord-Tenant Affairs,

ORDERED that Petitioner's Motion for Reconsideration is GRANTED; and

ORDERED that the Order of Commission in this proceeding dated June 18, 2009, is modified as set forth below; and

ORDERED that the Landlord shall, within thirty days, pay to the tenants the amounts set forth in Table 1 of this Order on Reconsideration as damages for causing a defective tenancy by failing to maintain the balconies at the property in a safe condition; and

ORDERED that the award of damages in the Commission's June 18, 2009, Order in this proceeding is vacated; and

ORDERED that monthly rent for the units identified in Table 1 of this order shall be reduced by $30.00 commencing on July 1, 2009, and continuing until the Landlord restores access to the balconies for those units.

_____

Steve Wasser, Presiding Commissioner

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Catherine Wakelyn, 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.