

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

Catherine H. Saunders
7333 New Hampshire Avenue, Apt. 817
Takoma Park, MD 20912

Tenant

v.

COLTA Case No. 09-03T

Tenacity 7333 New Hampshire Avenue LLC
c/o Tenacity Group
2008 Hillyer Place, NW
Washington, DC 20009

Landlord/Property Owner

and

Dreyfuss Management
4800 Montgomery Lane, 10th Floor
Bethesda, MD 20814

Landlord/Property Manager

OPINION AND ORDER

I. INTRODUCTION.

On February 25, 2009, Catherine H. Saunders (“Tenant”), a tenant of Apartment 817 (“Apartment”) at Takoma Overlook apartments located at 7333 New Hampshire Avenue, Takoma Park, Maryland (“Building”), 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 the property manager, Dreyfuss Management (individually and collectively “Landlord”). The Tenant’s Complaint alleged that the Landlord had locked-off the balcony to the Apartment, depriving the Tenant of use of the balcony, and also that bird droppings, to which the Tenant is allergic, accumulate on the closed-off balcony and cause her to suffer allergy attacks, respiratory problems, and other health difficulties. In addition, the Tenant complained of four “filthy rugs” on her kitchen floor that she wanted removed. As relief, the Tenant asked to be reimbursed \$50.00 per month for the “non-use and the cleaning” of her balcony. She also asked that her balcony be cleaned every two weeks, that management give her at least 24 hours written notice before entering the Apartment for any reason, and that management not enter the Apartment unless she is present. *See* Exhibits 3 and 3A.

The Landlord submitted a letter dated March 9, 2009, answering the Tenant’s Complaint (*see* Exhibit 6) and the Tenant filed a rebuttal, dated March 16, 2009, to the Landlord’s answer (*see* Exhibit 7).

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 May 12, 2009. The Tenant was present at the hearing and testified. Michael Lefkowitz, Manager of Tenacity 7333 New Hampshire Avenue LLC and General Counsel of Tenacity Group, presented the Landlord’s case. Valerie Gray and Edith Curry were present for Dreyfuss Management. Montgomery County Housing Code Inspector Lynn McCreary also was present at the hearing. 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.

Tenant Catherine H. Saunders testified that the balcony to the Apartment had been closed in or about September 2007, because Montgomery County Housing Code Inspectors had deemed the balconies of the Building to be unsafe and ordered the Landlord to close access to the balconies. She stated that some balconies in the Building had been repaired and reopened, but that the balcony for her Apartment remained locked-off and unavailable for her use. Ms. Saunders explained that, before the balcony was closed off, she had made frequent year-round use of her balcony, had furnished her balcony, and had enjoyed sitting and eating on her balcony. She said that her enjoyment of the Apartment was greatly diminished due to the loss of use of the balcony.

Ms. Saunders also complained that her balcony frequently accumulated bird droppings, which smelled and caused her to suffer headaches, sinus problems, congestion, and shortness of breath. She claimed to be allergic and extremely sensitive to the odor of bird droppings. She submitted various reports of medical visits and consultations and of medications prescribed for her which she said were

related to her allergy to bird droppings. *See* Exhibits 7-3 to 7-6, 9, and 11. She indicated that the bird droppings had been a problem since the balcony was closed off and continued to be a problem. She said the Landlord allowed her to clean the balcony to remove the bird droppings and other messes that had accumulated on the closed balcony in or about June 2008 and also in late February 2009. Until her balcony is repaired and she is allowed to use the balcony, Ms. Saunders asked that the Landlord inspect and clean her balcony on a regular basis (*i.e.*, every two weeks), as necessary in order to keep the balcony clean and free of bird droppings and other debris.

Ms. Saunders also complained that there were four filthy rug tiles on her kitchen floor, which is made of linoleum. She said that the Landlord's attempted remedy of this problem was to place replacement floor tiles over the filthy linoleum tiles and she denied that this was an adequate fix of the violation.

Finally, the Tenant complained that the Landlord had entered the Apartment without her consent and had taken papers and other of her belongings from the apartment. She asked that she be given 24 hours prior written notice of entry and also said the Landlord be prohibited from entering her apartment unless she was present and gave her consent.

Michael Lefkowitz, on behalf of the Landlord, said that the Tenant's balcony had been locked off at the request of the Montgomery County housing inspectors, who had deemed a number of balconies in the Building to be unsafe. The Landlord said the first balconies were closed off on approximately December 23, 2007, and agreed that Tenant's balcony had not yet been repaired and continued to be locked. The Tenant claimed that her balcony had been closed earlier than that date, but neither party submitted any evidence of the date of the balcony closure for Tenant's Apartment. The Landlord said that management had offered the tenants of apartments with a locked off balcony a \$30.00 rent credit for each month that the tenant did not have use of his or her balcony, commencing

with January 2008, the first month following the balcony closures. The rent credit, for those tenants who accepted the Landlord's credit offer, would begin with the rent due for May 2009 and would continue for an additional period of 16 months after the date that the tenant first occupied an apartment with a working balcony. If a tenant vacated the apartment prior to receiving the entire rent credit, then the Landlord would provide the tenant with the remaining credit balance at the time the tenant's security deposit was returned to the tenant.

Ms. Saunders said that she had refused this rent credit offer from the Landlord, as she believed that it was inadequate to compensate her for the loss of use of her balcony.

The Landlord represented that they were willing to inspect Ms. Saunders' balcony every two weeks and to clean it of bird droppings and other debris as necessary. The Landlord also stated that they will notify Ms. Saunders in writing no less than 24 hours in advance if the Landlord needed to enter the Apartment for any non-emergency reason other than to perform repairs requested by Ms. Saunders; however, the Landlord reserved the right to enter the Apartment at any time in the event of an emergency that threatened harm to any person or damage to property.¹ *See Exhibit 6.*

With respect to the four kitchen "rugs", the Landlord said that there were no "rugs" in the kitchen and that the four kitchen rugs were actually four vinyl kitchen floor tiles. The Landlord stated that the kitchen floor of Tenant's Apartment was replaced in May 2008. The Landlord's inspection of Tenant's Apartment in or about March 2009, revealed that four of the kitchen tiles were loose and Landlord said that those tiles have since been replaced.

¹ The Commission notes, however, that Section 6.16.140 provides that the "landlord shall provide the tenant with at least 48 hour written notification of the intent of the landlord or authorized person to enter the rental unit" and prescribes the contents of such written notice. However, if the tenant has requested repairs, the landlord may enter the rental unit to make such repairs; provided, however, that such repairs are performed within 2 weeks of the tenant's request. The landlord also may enter the rental unit without giving prior notice of intent to enter in case of an emergency.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1. The Commission finds that the Landlord received notice of the defective balconies in the Building by the Montgomery County Housing Code Inspector's noting of the unsafe condition of the balconies and the County Inspector's subsequent order that access to the balconies be closed off until repairs were made. The Commission finds that this is sufficient to show that the Landlord had actual notice of the defect and the fact that the balconies remains locked more than 1½ years later shows that the Landlord did not make good faith efforts to rectify the defect within one week of receiving notice. Accordingly, the Commission finds that the Landlord is liable for a defective tenancy for the closure of the balcony to the Apartment and for Tenant's loss of use of the balcony.

2. The Landlord argued that, consistent with the rent credit offered to the other tenants of the Building, Tenant's loss of use of her balcony diminished the value of her tenancy by \$30.00 per month. However, at the hearing in this case, neither Mr. Lefkowitz nor any witness on behalf of the Landlord explained the basis for this balcony rent credit amount or provided any specific calculation based on the size of the Tenant's Apartment or the balcony or any other figures that the Landlord used to calculate an appropriate rent credit for the loss of use of the balcony. The Tenant also did not provide a statistical basis for her request for a rent credit of \$50.00 per month for the loss of use of the balcony, but she emphasized her frequent year-round use of the balcony and that not being able to use the balcony greatly diminished her enjoyment of the Apartment. Based on the Tenant's testimony that she considered the balcony to be an extension of her indoor living space and that she used the balcony frequently during the entire year (including during the winter months), the Commission finds that the balcony closure reduced the value of Ms. Saunders' tenancy by \$50.00 per month and awards Ms. Saunders a rent refund of \$50.00 per month commencing on March 1, 2008 (the first rent due date within one year preceding the filing of the Complaint), and continuing through

July 31, 2009 (17 months), for a total of \$850.00 for Tenant's Apartment (# 817 at the Building). In addition, the Tenant's monthly rent for the Apartment shall be reduced by \$50.00, beginning with the rent for August 2009, and continuing until the Landlord restores Tenant's access to the balcony of the Apartment. The Commission has limited its award of a rent credit based on the Tenant's lack access to the balcony of the Apartment for one year prior to the date the Tenant filed the instant complaint (which was on February 25, 2009) because of the one-year statute of limitation set forth in Section 6.24.060.C.

3. The Commission does not find a defective tenancy based on the allegedly defective or filthy condition of four vinyl kitchen tiles in Tenant's kitchen.

4. Based on the Landlord's consent, the Commission orders the Landlord to inspect the balcony of Tenant's Apartment for bird droppings and other debris every two weeks from spring through fall, until Tenant's access to the balcony is restored, and to clean the balcony during these periods as needed. Landlord must arrange such inspections and balcony cleaning with Tenant and shall provide Tenant with advance written notice of intent to enter Tenant's Apartment for this purpose, as required by Section 16.140.A. Tenant may waive such bi-weekly balcony inspections and/or cleaning, if Tenant determines that the balcony inspection and/or cleaning is not necessary or convenient.

5. The Commission orders that the Landlord shall comply with the provisions of section 6.16.140 for all entries by Landlord, or any agent or contractor of Landlord, into Tenant's Apartment. The Commission does not find, however, that the Tenant alleged or proved any illegal entries by the Landlord into Tenant's Apartment.

V. ORDER.

Upon consideration of the foregoing Introduction, Applicable Law, Evidentiary Summary, and Findings of Fact and Conclusions of Law, it is this ____ day of July 2009, by the City of Takoma Park Commission on Landlord-Tenant Affairs,

ORDERED, that the Landlord shall pay to Tenant, Catherine H. Saunders, the sum of \$850.00 as damages for causing a defective tenancy by failing to maintain the balcony at Apartment 817 of the Building in a safe and usable condition; and

ORDERED, that Tenant's monthly rent for Apartment 817 of the Building shall be reduced by \$50.00 commencing on August 1, 2009, and continuing through the end of the month that the Landlord restores access to the balcony of Apartment 817; and

ORDERED, that the Landlord shall inspect the balcony of Tenant's Apartment for bird droppings and other debris every two weeks from spring through fall, until Tenant's access to the balcony is restored, and shall clean the balcony during these periods as needed. Landlord shall arrange such bi-weekly inspections and balcony cleaning with Tenant and shall provide Tenant with advance written notice of intent to enter Tenant's Apartment for this purpose, as required by Section

16.140.A, but Tenant may waive such bi-weekly balcony inspections and/or cleaning, if Tenant determines that the balcony inspection and/or cleaning is not necessary or convenient.

Joanne Hill, Presiding Commissioner

Peter Munger, Commissioner

Jarrett K. Smith, 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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