

CITY OF TAKOMA PARK
COMMISSION ON LANDLORD-TENANT AFFAIRS

Fidel Flores
P.O. Box 11523
Takoma Park, MD 11523

Tenant

v.

Adebisi Shownumi
10600 Blackstone Ave.
Cheltenham, MD 20623

Landlord/Owner

COLTA Case No. 09-05T

OPINION AND ORDER

I. INTRODUCTION.

On April 22, 2009, Fidel Flores (“Tenant”), a former tenant of 7904 Kennewick Avenue, Apartment 202, Takoma Park, Maryland (“Apartment”), filed a Complaint with the City of Takoma Park Commission on Landlord-Tenant Affairs (“COLTA” or “Commission”) against Adebisi Shownumi (“Landlord”), the owner of the rental facility located at 7904 Kennewick Avenue (“Property”). This Complaint was docketed as Case No. 09-05T.

The Tenant’s Complaint alleged that the Landlord failed to return his security deposit of \$650.00 and interest thereon and sought an award of three times the amount wrongfully withheld. The Landlord did not file an Answer to the Complaint.

The Commission has jurisdiction over this matter pursuant to Section 6.24.020 of the *Takoma Park Code*. In accordance with Section 6.24.080 of the *Takoma Park Code*, the Commission held a public hearing on June 16, 2009. The Tenant was present at the hearing. The Tenant, as the party filing the Complaint, has the burden of proof by a preponderance of the evidence. *Takoma Park Code* §6.24.080(J). No one attended the hearing on behalf of the Landlord.

II. APPLICABLE LAW.

Section 8-203 of the Real Property Article of the *Annotated Code of Maryland*, which is incorporated by reference in section 6.16.120 of the *Takoma Park Code*, governs security deposits under residential leases. Section 8-203(f) authorizes the withholding of a security deposit for unpaid rent, damage due to breach of lease, and physical damage caused by the tenant in excess of ordinary wear and tear. Section 8-203(g) requires a landlord, within 45 days of the termination of the tenancy, either to return the security deposit to the tenant or to provide to the tenant a “written list of damages claimed . . . together with a statement of the cost actually incurred.” Security deposits accrue simple interest in six-month intervals at a rate of 4% per annum for each six-month period ending before October 2004 and 3% per annum for each six-month period thereafter. *Md. Code Ann.*, Real Prop. Art., §8-203(e).¹

III. EVIDENTIARY AND HEARING SUMMARY.

The Tenant entered into a month-to-month lease for the Apartment commencing on February 7, 2000, and paid a security deposit of \$650.00. Exhibit 4. By letter dated November 25, 2008, the Tenant notified the Landlord that he would be vacating the Apartment on December 31,

¹ Effective October 1, 2004, the Maryland General Assembly amended *Md. Code Ann.*, Real Prop. Art., §8-203(e) to reduce the statutory interest rate on security deposits from 4% to 3%.

2008. Exhibit 5. The Tenant, in his letter, requested that the Landlord return his security deposit and asked that the Landlord send the security deposit to the City's Housing Office and provided the Office's mailing address. Exhibit 5. The Tenant also advised the Landlord that he wished to be present during the inspection at the end of his tenancy and requested that the Landlord advise him of the date and time of the inspection. Exhibit 5. The Tenant sent the letter to the Landlord via certified mail on November 26, 2009. Exhibit 5. The Postal Service attempted delivery on November 28, December 2, December 13, and December 24, and then returned the letter as unclaimed.

The Tenant testified that the Landlord never responded to his letter. The Tenant testified that he also called the Landlord and advised her that he had to leave for an emergency trip to El Salvador in January and again requested that she set up an inspection time so that he could return the keys. He testified that the Landlord never responded to his call and that, when he returned from his trip to El Salvador, City of Takoma Park Housing Specialist Jean Kerr contacted the Landlord and arranged for the Landlord to conduct an inspection of the Apartment on January 21, 2009. The Tenant returned the keys to the Landlord during the inspection, and the Tenant testified that the Landlord did not mention any damage to the Apartment during the inspection.

The Tenant testified that, although he had the Post Office forward his mail to his new address, he has not received a refund of his security deposit or any correspondence from the Landlord relating to his security deposit at his current address, and that he confirmed with the Housing Office that it had not received his security deposit refund or any correspondence relating to his security deposit from the Landlord.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1. The Commission finds that the Tenant was a month-to-month Tenant of the Apartment commencing on February 7, 2000.
2. The Commission finds that the Tenant paid a security deposit of \$650.00 on February 7, 2000. Exhibit 4.
3. The Commission finds that the Tenant gave written notice to the Landlord effective November 28, 2008, that he would be vacating the Apartment on December 31, 2008, and that the Tenant did vacate the Apartment on that date.
4. The Commission finds that the Tenant's \$650.00 security deposit accrued interest at the statutory rate of 4% per annum from February 7, 2000, through August 6, 2004, and at the statutory rate of 3% per annum from August 7, 2004, through February 6, 2009, amounting to a total of \$208.80 accrued due through the date of this Order. The Commission further finds that simple interest of 3% per annum (\$9.75) for each six-month period after February 6, 2009 (*e.g.*, February 7 through August 6, 2009) will continue to accrue on the security deposit until the deposit plus interest is returned to the Tenant.
5. The Commission finds that the Landlord did not comply with section 8-203(g) of the Real Property Article of the *Annotated Code of Maryland*, which required the Landlord to send to the last known address of the Tenant, within 45 days of the termination of the tenancy, a written list of damages claimed along with a statement of actual costs incurred or to return the security deposit, together with interest, to the Tenant. Accordingly, the Commission holds that the Landlord has forfeited her right to withhold any portion of the Tenant's security deposit. Therefore the Commission holds that the Landlord has wrongfully withheld \$858.80 (the \$650.00 security deposit and \$208.80) in accrued interest from the Tenant.
6. When a Landlord, without a reasonable basis, fails to return any part of the Tenant's

security deposit, plus accrued interest, within 45 days after termination of the tenancy the tenant has an action for up to threefold of the amount wrongfully withheld. *See Md. Code Ann.*, Real Prop. Art. §8-203(e)(4). The statutory time for return of the deposit has long passed, and the Commission finds that the Landlord did not have a reasonable basis to withhold any portion of the Tenant's security deposit. Accordingly, the Commission awards the Tenant three times the Tenant's security deposit and the interest accrued thereon.

V. ORDER.

Upon consideration of the Complaint, exhibits, and any evidence presented at the hearing in this case, it is this 10th day of July 2009, by the City of Takoma Park Commission on Landlord-Tenant Affairs:

ORDERED, that the Landlord shall pay to the Tenant \$2,576.40, which is three times the amount of the Tenant's security deposit and accrued interest that the Landlord wrongfully withheld from the Tenant without reasonable basis; and it is further

ORDERED, that for each six-month period after February 7, 2009, that the above amount remains unpaid, the Landlord shall pay the Tenant an additional \$29.25, which is three times the interest accrued on the security deposit; and it is further

ORDERED, that the Landlord shall comply with this Order within fourteen days.

Dorothy Clennon, Presiding Commissioner

Robert A. Liebreich, 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 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.

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