

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

Krishna San Nicolas  
8342 Eastridge Avenue, #5

Farha Shabazz  
8342 Eastridge Avenue, #3

Bernadette Blake  
8342 Eastridge Avenue, #4

Paulina Perez  
8342 Eastridge Avenue, #1  
Takoma Park, MD 20912

Tenants

v.

8708 Bradford Road, LLC  
c/o Reden Management/Eric Denchfield  
11912 Maple Avenue  
Rockville, MD 20852

Landlord

COLTA Case Nos. 09-10T,  
09-11T, 09-12T, 09-14T

**OPINION AND ORDER**

**I. INTRODUCTION.**

From June 9, 2009, through July 7, 2009, four tenants of the condominium building located at 8342 Eastridge Avenue, Takoma Park, Maryland (“Property”) filed a Complaint with the City of Takoma Park, Commission on Landlord-Tenant Affairs (“COLTA” or “Commission”) against the

owner of the Property, 8708 Bradford Road, LLC, and the owner's managing agent, Eric Denchfield ("Landlord"). These Complaints were docketed as COLTA Case Nos. 09-10T (Tenant Krishna San Nicolas), 09-11T (Tenant Farha Shabazz), 09-12T (Tenant Bernadette Blake), and 09-14T (Tenant Paulina Perez).

The Tenants' Complaints alleged that the Landlord was charging monthly rents that were higher than the rent amount allowed for their units by the City's rent stabilization law and that the Landlord was liable for a defective tenancy because the boiler did not work during the winter of 2008-2009 and because the Property does not have working mail boxes. As relief, the Tenants requested that the rents be reduced to the legal amount and that they may be reimbursed for all rent overcharges, that they be awarded damages for the defective tenancy, that they be permitted to repair the mailboxes and boiler and deduct the cost of the repairs from their rent, and that they be permitted to deduct any rent refund and damages awarded from their rent. *See Exhibit 2.* The Landlord did not respond to the Complaints.

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 Tenants' complaints on July 28, 2009. The complaining tenants were present at the hearing and testified. Jean Kerr, Housing Specialist with the City of Takoma Park Office on Landlord-Tenant Affairs also testified. The Tenants, as the complaining parties, have 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.

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).

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

#### **A. Illegal Rent.**

Krishna San Nicolas entered into a three-year Option to Purchase agreement for Unit 5 of the Property commencing on November 1, 2008, with the right to terminate the “lease” after one year. Exhibit 2A. The Agreement required Ms. San Nicolas to pay monthly rent of \$1,500.00 plus \$160.00 per month for heat and utilities. Exhibit 2A.

The Tenant testified that she paid the \$1,500.00 monthly rent and the \$160.00 fee, which the Landlord had advised her was a condominium association fee and covered gas and heat, through February 2009, when she realized that the boiler did not work and that there was not a condominium association for the Property. She testified that she requested documentation regarding the condominium association from the Landlord but he did not respond. Ms. Nicolas presented

documentation of her rental payments. Exhibits 2C-2G, 15-16. The Commission finds that she paid \$1,660.00<sup>1</sup> per month for November 2008 through February 2009, and \$1,500.00 for March 2009, \$860.00 for April 2009, and \$1,500 per month for May through July 2009, for a total of \$13,500.00 for the period of November 2008 through July 2009.

According to Housing Specialist Jean Kerr, the legal monthly rent for Ms. San Nicolas's Unit commencing November 2008 is \$797.00. Exhibit 2I. Therefore, the Commission finds that the legal rent for Ms. San Nicolas's unit for the period of November 2008 through July 2009 was \$7,173.00 and that the Landlord charged and Ms. San Nicolas paid \$6,327.00 in excess of the legal rent for her Unit for that period. Accordingly, the Commission holds that the Landlord is liable to Ms. San Nicolas for \$6,327.00 for damages for charging illegal rent, and shall require that the rent for Ms. San Nicolas's apartment be reduced to \$797.00 per month until the Landlord becomes eligible to increase the rent and provides her with timely written notice.

Farha Shabazz entered into a one-year lease for Unit 3 of the Property commencing on September 1, 2008, with a monthly rent of \$1,500.00. Exhibit 3K. According to the lease, Ms. Shabazz was responsible for paying for electricity, telephone, and cable television, and the Landlord was responsible for paying for gas and water and sewer service for her Unit. Exhibit 3K. She testified that the Landlord has not paid the gas bill for the Property since 2008. She and the other tenants of the Property received notices dated May 8, 2009, from Washington Gas advising that gas service to the Property would be cut off on May 22, 2009, due to nonpayment of the gas bill in the amount of \$1,084.55. Exhibit 3I. Ms. Shabazz paid \$691.40 to Washington Gas to avoid having the

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<sup>1</sup>Section 6.16.010 provides that utility fees must be for the actual cost of the utilities. Because the Landlord has not paid for the utilities for the Property, the fees paid by the Tenants constitute rent.

gas cut off at the Property, Exhibit 3I-2. Ms. Shabazz submitted documentation of her rental payments. Exhibits 3B-3H, 17-20. She testified that she initially moved into Unit 1 of the Property and discovered extensive water damage and mold in the unit. After the Landlord refused her request to move to a different unit, she hired a home inspector to inspect Unit 1. Exhibit 3A. Ms. Shabazz paid \$1,500 per month for rent for September 2008 through April 2009 and June through July 2009.<sup>2</sup> For May 2009, she testified that she deducted her payment of \$691.40 to Washington Gas from her rent payment, see Exhibit 3I at C-2, but the Landlord did not cash her check for the remainder of her rent. Ms. Shabazz's paid rent for the period of September 1, 2008 through July 31, 2009, of \$15,691.40.<sup>3</sup>

According to Jean Kerr, the legal monthly rent for Ms. Shabazz's Unit from September 1, 2008, through August 31, 2009, was \$802.00. Exhibit 30. Therefore, the Commission finds that the legal rent for Ms. Shabazz's unit for the period of September 1, 2009, through July 31, 2009, is \$8,822.00 (11 months x \$802.00), and that the Landlord charged and Ms. Shabazz paid illegal rent in the amount of \$6,869.40 for that period. Accordingly, the Commission holds that the Landlord is liable to Ms. Shabazz for \$6,869.40 for damages for charging illegal rent, and shall require that the rent for Ms. Shabazz's apartment be reduced to \$802.00 per month until the Landlord becomes eligible to increase the rent and provides her with timely written notice.

Bernadette Blake entered into a Tenant's Option to Purchase agreement for Unit 4 of the

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<sup>2</sup> Ms. Shabazz testified that, with the Landlord's permission, she deducted the \$300.00 inspection fee from her October rent, and, therefore, her rent check was only \$1,200.00 for that month. Exhibits 3A and 3C.

<sup>3</sup> Because the Landlord was responsible for paying the Washington Gas bill, the Commission finds that Ms. Shabazz's payment of the gas bill for the landlord constitutes a payment of rent.

Property on September 15, 2008, with her occupancy commencing October 10, 2008, and requiring her to pay monthly rent of \$1,500.00 plus a monthly condominium fee of \$160.00. Exhibit 4A. The agreement also required her to pay for electrical service and noted, “electric needs to be set up/shared until separated.” Exhibit 4A. The agreement provided that \$500.00 of each monthly rent payment would be credited toward the Tenant’s purchase of her Unit if she exercised the option to purchase and would be withheld as rent if she did not exercise her option. Exhibit 4A. Ms. Blake submitted documentation of her rental payments. Exhibits 4D-4M, 21. She paid \$1,000.00 for October 10-October 31, 2008, \$1,660.00 per month from November 2008 through May 2009, and \$1,500.00 per month for June and July 2009, for a total of \$15,620.00 for the period of October 10, 2008, through July 31, 2009.

According to Jean Kerr, the legal monthly rent for Ms. Blake’s Unit commencing October 2008 is \$820.00. Therefore, the Commission finds that the legal rent for Ms. Blake’s unit for the period of October 10, 2008, through July 31, 2009, is \$7,961.90 (9 months x \$820.00 + \$581.90 for October 10-31, 2008<sup>4</sup>), and that the Landlord charged and Ms. Blake paid illegal rent in the amount of \$7,658.10 for that period. Accordingly, the Commission holds that the Landlord is liable to Ms. Blake for \$7,658.10 for damages for charging illegal rent, and shall require that the rent for Ms. Blake’s apartment be reduced to \$820.00 per month until the Landlord becomes eligible to increase the rent and provides her with timely written notice.

Paulina Perez entered into a one-year lease for Unit 1 of the Property commencing on March 1, 2009, for a monthly rent of \$1,300.00. The lease provides that Ms. Perez is responsible for paying for telephone and cable television service and that the Landlord will be responsible for paying for

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<sup>4</sup> \$820 divided by 31 days equals \$26.45 per day. Ms. Blake resided in the Unit for 22 days in October 2008. \$26.45 times 22 equals \$581.90.

gas, electric, and water and sewer service. Ms. Perez received a notice from Pepco dated April 21, 2009, advising her that the Landlord had not assumed responsibility for the electrical service for her Unit and that service to her Unit would be terminated if she did not establish an account. Exhibit 5H. Ms. Perez made a payment of \$392.91 to Pepco for electrical service to her Unit on June 7, 2009. Exhibit 5I. Ms. Perez deducted the Pepco payment from her July rent payment. Exhibit 5G. Ms. Perez submitted documentation of her rental payments for the months of March-August 2009. Exhibits 5C-5H, 25-27. Ms. Perez paid \$1,300.00 per month for rent for March 2009 through August 2009,<sup>5</sup> for a total of \$7,800.00.

According to Jean Kerr, the legal monthly rent for Ms. Perez's Unit commencing March 1, 2009, is \$797.00. Therefore, the legal rent for Ms. Perez's Unit for March 2009 through August 2009 was \$4,782.00, and the Landlord charged and Ms. Perez paid \$3,018.00 in rent in excess of the legal amount for that period. Accordingly, the Commission holds that the Landlord is liable to Ms. Perez for \$3,018.00 for damages for charging illegal rent, and shall require that the rent for Ms. Blake's apartment be reduced to \$797.00 per month until the Landlord becomes eligible to increase the rent and provides her with timely written notice.

B. Inoperable boiler.

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<sup>5</sup> Ms. Perez wrote a check to the Landlord for \$908.00 for July rent and paid \$392.00 to Pepco for an electric bill that was the responsibility of the Landlord. Ms. Perez wrote a check to the Landlord for \$822.28 for June rent and paid \$477.72 to GE for the repair of an air conditioning unit in her Apartment that was the responsibility of the Landlord. Ms. Perez wrote a check to the Landlord for \$1,064.00 for August rent and paid \$236.00 to GE for the repair of another air conditioning unit in her Apartment that was the responsibility of the Landlord. Because the Landlord was responsible for paying the electrical bill and maintaining the air conditioning units, the Commission finds that Ms. Perez's payment of these expenses for the Landlord constitutes the payment of rent.

Ms. Shabazz testified that, according to the Landlord, the Property had dual mode heating system that included a single gas-powered boiler that is supposed to provide heat to all of the units and maintain the units at 65 degrees during the winter, and that each unit was supposed to have three electric window units that were to provide supplemental heat, as well as providing air conditioning in the summer. All of the complaining Tenants asserted that the boiler never worked during their tenancy and that the supplemental electric heaters were not sufficient to keep their units at a comfortable temperature. The tenants testified that they and their children had to wear extra layers of clothing in their units and use extra blankets at night during the winter. Ms. Blake testified that she used her oven to heat her unit. Ms. San Nicolas testified that she complained to Pepco about her exorbitant electrical bill, and Pepco advised her that the electric heaters were insufficient to heat her apartment and were highly inefficient.

Ms. San Nicolas testified that she notified the Landlord that the heat was not working, that the Landlord advised her to call the maintenance man, and that the maintenance man never came to repair the boiler. She testified that the maintenance man later advised her that the Landlord did not want the boiler to be turned on.

Section 26-7 of the Property Maintenance Code requires landlords to maintain space and central heating units in good working condition and to provide heating equipment capable of maintaining a temperature of 68 degrees. The Commission finds, based on the testimony of the Tenants, that the gas boiler was inoperable throughout the 2008-2009 heating season, and that the supplemental heaters were insufficient to maintain their units at a comfortable temperature. The Commission, based on the testimony of Ms. San Nicolas that the Landlord's maintenance man advised her that it was the Landlord's decision not to utilize the boiler, finds that the Landlord was on notice that the boiler was not operating for the entire heating season and failed timely to make good



faith efforts to repair the boiler. Accordingly, the Commission finds that the Landlord caused a defective tenancy. The Commission finds that the lack of sufficient heat because of the defective boiler reduced the value of each Tenant's tenancy by \$200.00 per month during for the months of October 2008 through March 2009. Accordingly, the Commission holds that the landlord is liable to Tenants for the defective tenancy relating to the lack of heat and awards the Tenants damages in accordance with Table 1, below:

**TABLE 1**

<u>Tenant</u>	<u>Months Without Heat</u>	<u>Damages</u>
San Nicolas	5	\$1,000.00
Shabazz	6	\$1,200.00
Blake	5 (plus 22 days in Oct.)	\$1,141.90 <sup>6</sup>
Perez	1	\$200.00

C. Inoperable mailboxes.

All of the complaining tenants asserted that they have not been able to receive mail in their mail boxes since their tenancies commenced. Ms. Shabazz explained that when she moved into the Property in August 2008, the postal carrier did not have a key to the building, and no mail was delivered to the building. The mailboxes in the lobby of the Property are not secured to the wall, Exhibit D, and, except for Ms. Perez, the Landlord has not provided the Tenants with keys to their mailboxes. In early May 2009, the regular postal carrier for the Property went on leave and the tenants stopped receiving mail at the Property. According to Ms. Shabazz, the Post Office advised her that it could not deliver mail to the Property because the mailboxes did not have locks. The Tenants testified that they have to pick up their mail at a small Post Office on University Boulevard

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<sup>6</sup> \$200 divided by 31 equals \$6.45 per day. Ms. Blake resided in the Unit for 22 days in October 2008. 22 times \$6.45 equals \$141.90.

that closes at 4:45 p.m. and that does not have enough parking, which makes it very inconvenient. Ms. Perez testified that some of her mail goes to the Takoma Park Post Office and some goes to the University Boulevard Post Office, so she must go to both branches to make sure she is receiving all of her mail. She testified that the Landlord fixed her mailbox approximately two weeks prior to the hearing but that now only some of her mail comes to her mailbox and that she still must go to the Post Offices to get all of her mail. The Tenants complained that the lack of functioning mailboxes has caused their mail to be lost, delayed, and returned to the sender. Ms. San Nicolas testified that her inability reliably to receive mail from her daughter's school has been particularly troublesome. Section 6.16.050 of the *Takoma Park Code* requires that landlords maintain all facilities and conveniences supplied to their tenants in good working order. The Commission finds, based on the testimony of the tenants, that the Landlord has failed to keep the mailboxes at the Property in good working order since August 2008, when the first complaining Tenant, Ms. Shabazz, moved into the Property, in violation of Section 6.16.050. The Commission finds that the Landlord was on notice that the mailboxes were not in good working order since August 2008 because the Landlord never distributed the keys to the Tenants. There is no evidence in the record that the Landlord has made any effort to repair the mailboxes other than that of Ms. Perez. Accordingly, the Commission holds that the Landlord caused a defective tenancy with respect to the inoperable mailboxes at the Property.

The Commission notes that the lack of operable mailboxes caused the Tenants significant inconvenience. Moreover, the Commission notes that the ability to receive mail is a significant benefit of maintaining a residence. Therefore, the Commission finds that the inoperable mailboxes have reduced the values of the Tenants' tenancies by \$40.00 per month. Accordingly, the Commission holds that the Landlord is liable to Tenants for the defective tenancy relating to the inoperable mailboxes and awards the Tenants damages in accordance with Table 2, below:

**TABLE 2**

<u>Tenant</u>	<u>Months w/o Mailboxes (through July 2009)</u>	<u>Damages</u>
San Nicolas	9	\$360.00
Shabazz	11	\$440.00
Blake	9 (plus 22 days in Oct.)	\$388.38 <sup>7</sup>
Perez	5	\$200.00

D. Miscellaneous matters.

At the hearing, Ms. Perez asked that the Commission grant her permission to terminate her lease without penalty. That issue is not properly before the Commission because Ms. Perez did not raise it in her written Complaint. However, the Commission notes that, according to the City's records, the Landlord does not have a rental license for any of the units at the Property, and, so long as the Landlord does not have a rental license for Ms. Perez's unit, the Landlord cannot enforce the lease against her.

**V. ORDER.**

Upon consideration of the record in this case, it is this 26th day of August 2009, by the City of Takoma Park Commission on Landlord-Tenant Affairs:

ORDERED, that the allowable rent for Apartment 5 of the Property is \$797.00 per month;  
and

ORDERED, that the Landlord shall pay to the Tenant of Apartment 5 of the Property, Krishna San Nicolas, \$7,687.00 as damages for charging an illegal rent and for causing a defective tenancy;  
and

ORDERED, that the Tenant of Apartment 5, Krishna San Nicolas, is authorized to withhold

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<sup>7</sup> \$40 divided by 31 equals \$1.29 per day. Ms. Blake resided in the Unit for 22 days in October 2008. 22 times \$1.29 equals \$28.38.

\$7, 687.00 from subsequent months' rent for the Apartment;<sup>8</sup> and

ORDERED, that in the event Ms. San Nicolas vacates the Apartment prior to withholding a total of \$7,687.00 in rent payments, then, within 30 days after written demand from her, the Landlord shall pay her all of the remaining balance of the award of damages; and

ORDERED, that the allowable rent for Apartment 3 of the Property is \$802.00 per month; and

ORDERED, that the Landlord shall pay to the Tenant of Apartment 3 of the Property, Farha Shabazz, \$8,509.40 as damages for charging an illegal rent and for causing a defective tenancy; and

ORDERED, that the Tenant of Apartment 3, Farha Shabazz, is authorized to withhold \$8,509.40 from subsequent months' rent for the Apartment;<sup>9</sup> and

ORDERED, that in the event Ms. Shabazz vacates the Apartment prior to withholding a total of \$8,509.40 in rent payments, then, within 30 days after written demand from her, the Landlord shall pay her all of the remaining balance of the award of damages; and

ORDERED, that the allowable rent for Apartment 4 of the Property is \$820.00 per month; and

ORDERED, that the Landlord shall pay to the Tenant of Apartment 4 of the Property, Bernadette Blake, \$9,188.38 as damages for charging an illegal rent and for causing a defective

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<sup>8</sup> I.e., if the Landlord has not paid Ms. San Nicolas the damages awarded her, she is entitled to withhold her \$797.00 rent payment for nine months ( $9 \times \$797 = \$7,173$ ) and, on the tenth month, deduct \$514 ( $\$7,173 + \$514 = \$7,687$ ) from her rent payment and pay the Landlord \$283.00.

<sup>9</sup> I.e., if the Landlord has not paid Ms. Shabazz the damages awarded her, she is entitled to withhold her \$802.00 rent payment for ten months ( $10 \times \$802 = \$8,020$ ) and, on the eleventh month, deduct \$489.40 ( $\$8,020 + \$489.40 = \$8,509.40$ ) from her rent payment and pay the Landlord \$312.60.

tenancy; and

ORDERED, that the Tenant of Apartment 4, Bernadette Blake, is authorized to withhold \$9,188.38 from subsequent months' rent for the Apartment;<sup>10</sup> and

ORDERED, that in the event Ms. Blake vacates the Apartment prior to withholding a total of \$9,188.38 in rent payments, then, within 30 days after written demand from her, the Landlord shall pay her all of the remaining balance of the award of damages; and

ORDERED, that the allowable rent for Apartment 1 of the Property is \$797.00 per month; and

ORDERED, that the Landlord shall pay to the Tenant of Apartment 1 of the Property, Paulina Perez, \$3,418.00 as damages for charging an illegal rent and for causing a defective tenancy; and

ORDERED, that the Tenant of Apartment 1, Paulina Perez, is authorized to withhold \$3,418.00 from subsequent months' rent for the Apartment;<sup>11</sup> and

ORDERED, that in the event Ms. Perez vacates the Apartment prior to withholding a total of \$3,418.00 in rent payments, then, within 30 days after written demand from her, the Landlord shall pay her all of the remaining balance of the award of damages; and

ORDERED, that the Landlord shall restore the boiler for the Property to good working order within 30 days; and

ORDERED that the Tenants may pay to have the boiler repaired if the Landlord has not done

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<sup>10</sup> I.e., if the Landlord has not paid Ms. Blake the damages awarded her, she is entitled to withhold her \$820.00 rent payment for eleven months ( $11 \times \$820 = \$9,020$ ) and, on the twelfth month, deduct \$168.38 ( $\$9,020 + \$168.38 = \$9,188.38$ ) from her rent payment and pay the Landlord \$651.62.

<sup>11</sup> I.e., if the Landlord has not paid Ms. Perez the damages awarded her, she is entitled to withhold her \$797.00 rent payment for four months ( $4 \times \$797 = \$3,188$ ) and, on the fifth month, deduct \$230 ( $\$3,188 + \$230 = \$3,418$ ) from her rent payment and pay the Landlord \$567.00.

so and may deduct the cost of repairing the boiler from their rent upon providing the Landlord with a copy of a receipt for the service to the boiler; and

ORDERED that the Landlord shall restore the mailboxes at the Property to good working order within 30 days; and

ORDERED that the Tenants may pay to have the mailboxes repaired if the Landlord has not done so and may deduct the cost of repairing the mailboxes from their rent upon providing the Landlord with a copy of a receipt for the repair of the mailboxes.

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Catherine C. Wakelyn, Commissioner

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Joanne Hill, Commissioner

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Juan Jose Canales, 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.

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