CITY OF TAKOMA PARK
COMMISSION ON LANDLORD-TENANT AFFAIRS

Birchwood Tenant Association 636 Houston Avenue Takoma Park, MD 20912 Complainant v. Bruce Patner d/b/a Patner Properties 5530 Wisconsin Ave., # 1127 Chevy Chase, MD 20815 Respondent	COLTA Case No. 09-06TA

OPINION AND ORDER

I. INTRODUCTION.

On April 22, 2009, the Birchwood Tenant Association, on behalf of several tenants of the apartment building located at 636 Houston Avenue, Takoma Park, Maryland ("Property") filed a Complaint with the City of Takoma Park Commission on Landlord-Tenant Affairs (hereinafter referred to as "COLTA" or as "Commission") against the owner of the Property, Bruce Patner ("Landlord"). This Complaint was docketed as Case No. 09-06TA. The Tenant Association alleged that the Landlord was liable for a defective tenancy because of an inoperable elevator, missing or inoperable locks on the lobby entrances, roach infestation, loose stair treads, and inoperable lights in the parking lot of the Property. Exhibit 3. The Tenant Association sought damages for the defective

tenancy. Exhibit 3. The Landlord, in his Response to the Complaint, asserted (1) that he made good faith efforts to restore elevator service to the Property but was unable to do so because of reasons beyond his control, (2) that he installed locks on the doors but that vandals broke the locks, (3) that he has a monthly extermination contract but that the tenants prevent the total extermination of the Property because they do not remove food from their cabinets to facilitate the application of pesticides, (4) that he repaired the broken parking lot lights, and (5) that he secured the stair treads. Exhibit 5.

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 a public hearing on July 14, 2009. The President of the Tenant Association, Monica Lewis, attended the hearing on behalf of the Tenant Association. The Tenant Association was represented by Robert Stolworthy, Esq., and Philip Selden, Esq. The Landlord was present and was represented by Matthew Patner, 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).

III. HEARING AND EVIDENTIARY SUMMARY.

A. Inoperable Elevator.

The uncontroverted evidence was that the elevator in the Property was out of service from October 2007 through April 2009, and that the Landlord was aware of the problem since its commencement. The Property is a four-floor, 36-unit, apartment building with one elevator. The street-level entrance to 636 Houston Avenue is at the front of the building on the first floor; the building also has a rear entrance on the second floor that provides access to the parking lot.

The broken elevator significantly inconvenienced the tenants. One fourth floor tenant spent the entire term of her pregnancy without elevator service and had to be carried down the stairs by the fire department when she went into labor. The laundry room is located on the first floor and the tenants' mailboxes are located in the lobby, a few steps down from the first floor.

The elevator at the Property also was inoperable for more than five months in 2002 because of a hole in the hydraulic jack unit that required the fabrication of custom parts. At that time, the elevator was more than forty years old. The Tenant Association asserts that the Landlord should have replaced the aging elevator after the 2002 outage because it was foreseeable that the elevator would fail periodically and require lengthy repairs, and, therefore, the Landlord caused a defective tenancy. The Tenant Association also argues that the Landlord failed to make timely good faith efforts to repair the elevator, citing the length of time of the outage as evidence.

The Landlord asserted that he made every effort to restore elevator service to the Property as quickly as possible. He testified that he had a monthly maintenance contract for the elevator with

Collins Elevator Service ("Collins") and submitted receipts for the monthly maintenance service. Exhibit 5 at pp. 35-60. He testified that a fourth floor tenant kept jamming the elevator door's sensor with his wheelchair, see Exhibit 5 at pp. 67, and that Collins recommended that he replace the controls for the elevator to modernize the elevator and avoid continual problems. See Exhibit 5 at p. 67. Collins issued an $82,370.00 proposal for the modernization of the elevator repair on October 10, 2007, which the Landlord asserted was approximately one week after the elevator broke, and the Landlord executed the proposal the same day. Exhibit 5 at pp. 2-4. Collins issued a $10,980.00 proposal for the installation of a fire alarm system for the elevator on August 6, 2008, and the Landlord also executed that proposal on the day that Collins issued it. Exhibit 5 at pp. 5-6. Ken Collins of Collins Elevator Service confirmed that the Landlord had a monthly maintenance contract for the Property and that the Landlord immediately authorized any work necessary.

The Landlord asserted that several factors contributed to the delay in restoring elevator service. He testified that the elevator's manufacturer went out of business and that many parts had to be custom fabricated. The documents that Collins produced in response to the Tenant Association's subpoena, Exhibit 13, included invoices and parts orders from several elevator equipment vendors ranging from California to Arkansas to Baltimore, Maryland. Collins placed many of the Orders in October and November 2007, and continued to place orders over the ensuing months. The records indicated that many of the major parts were not shipped immediately upon placement of the order, with lead times ranging from one to ten weeks. See, e.g., Exhibit 13 at pp. 31, 35, 36, 45, 50, 159, 165-68, The Landlord also asserted that, because of the extensive improvements being made to the elevator, it became subject to revised State safety regulations. The Landlord's resident manager, Shamir Deen, testified that he often saw Collins employees working at the property during the elevator outage. He testified that the elevator was functional is September or October 2008 but that it

took several months to get a certificate from the State.

The Montgomery County Office of Permitting Services required the submission of the plans for the electrical work and the inspection of electrical work by the County Electrical Inspector and the fire marshal. The county did not issue the electrical permit and the fire alarm permit until October 24, 2008. Exhibit 5 at pp. 26-27, 29-30.

The Landlord asserted that, pursuant to the current State elevator regulations, he had to have a private independent inspector inspect the elevator before the State inspector would inspect the elevator. See Exhibit 13 at p. 95. He asserted that it took approximately three weeks to have the private inspection done. The private inspection was completed on December 5, 2008, Exhibit 5 at pp. 16-20, and then he had Collins and Collins's electrical subcontractor perform the additional work noted by the inspector. The elevator was inspected five times between October 2008 and April 2009 and the inspectors required additional work each time.

The inspectors required (1) the installation of a dedicated phone line for the elevator, which had to be scheduled with Verizon, see Exhibit 5 at pp. 14-15, 17; (2) the installation of new high intensity lights and smoke detectors above each door; (3) the relocation of water pipes from the ceiling in the boiler room, Exhibit 5 at p. 10; and (4) the construction of a roof with gutters over the elevator controls in the boiler room.

The Landlord testified that he did not know that one of the fourth floor tenants was pregnant until December 2008, that the tenant did not request to move to a lower floor, and that she declined his offer to move to a lower floor once he knew of her condition. Exhibit 5 at p. 66.

Mr. Collins testified that the old elevator frequently was subject to vandalism and that the Landlord had to replace the door sensor three times at a cost $2,000.00 each time. Het testified that in October 2007, the valve and pump unit for the elevator began to fail, which prevented the elevator

car from stopping level with the building floors. This presented a safety hazard and required the elevator be taken out of commission. He testified that it was becoming more difficult to obtain parts for the elevator, so he advised the Landlord to perform a modernization. He testified that the difference between a modernization of an elevator and the replacement of an elevator is that a modernization involves the reuse of the basic steel parts of the elevator that are in good condition, which provides a cost savings. He testified that, because it would take two to three months to get the pump and valve once they were ordered, he tried to get replacement units that could be installed to keep the elevator in service while the new units were manufactured, but that he was unable to locate the necessary parts.

Mr. Collins testified that he was not personally involved in the modernization project, but that his construction supervisor kept him informed of the progress and that he is familiar with elevator modernizations. Mr. Collins testified that equipment for the elevator was in the boiler room. In contrast, in modern buildings, the elevator equipment is housed in a dedicated room. He testified that such arrangements are normally grandfathered out of current regulations but that, in this case, the State inspectors required extensive changes before they would issue a certificate for the elevator.

He testified that three different State inspectors were involved in the modernization and that they were not used to seeing elevator equipment housed in a boiler room. He testified that the State elevator code is not written to address such a situation; therefore, the inspectors were making decisions on an ad hoc basis. He testified that the inspectors visited the job site throughout the modernization project and gave conflicting instructions as to what was permitted or required. For example, he testified that the Landlord had a fence build around the elevator equipment in the boiler room to address the concerns of one inspector, see Exhibit 5 at pp. 7-8, and that, although the code provides no guidance on such issues, the next inspector said that the fence was not big enough and

required that it be replaced with a bigger fence. Mr. Collins testified that one inspector authorized the installation of the oil tank for the elevator in one location in the boiler room and that another inspector then required that they move the oil tank to a different location, which also required the relocation of the boiler.

He testified that such a modernization normally would take two to three months to obtain the parts necessary to begin the job and an additional three to four months to complete the work. He testified that he had never had a job where the inspectors made it so difficult to obtain a certificate. He testified that the Landlord wrote to the State's Chief Elevator Inspector because of his frustration with the delay. See Exhibit 13 at pp. 52-53.

The Tenants Association cross-examined Mr. Collins regarding documents that indicated that certain parts were not ordered until several months after the modernization began. Mr. Collins testified that the major parts necessary to begin a modernization are ordered immediately, followed by the remaining parts, so that parts will arrive in stages and will not pile up on the job site. In his opinion, the parts seemed to have been ordered at the appropriate times.

B. Exterior door locks.

The Tenant Association asserts that the two exterior entryway doors have not had functional locks for more than one year and that the Landlord is required to provide functioning locks on those doors pursuant to the tenants' leases and section 26-8(d)(4)(A) of the Property Maintenance Code. Following an inspection on September 24, 2008, Montgomery County Code Enforcement directed the Landlord to repair or replace the locks. Exhibit 3-D. The locks remained inoperable when Code Enforcement reinspected the Property on October 27, 2008. Exhibit 3-E. The District Court of Maryland for Montgomery County issued an Order for Abatement dated April 28, 2009, that required

the Landlord to repair the exterior doors. Exhibit 7. The Tenant Association advised the Landlord that the locks were not functioning in letters dated March 30 and June 16, 2009. Exhibits 3-G and 10. The Tenant Association asserted, and the Landlord conceded, that the Landlord does not provide a doorman or front desk staff to monitor who enters the Property.

Ms. Lewis testified that she found a homeless man in the fourth floor hallway who had urinated on the carpet and that nonresidents often urinate in the stairwell of the Property. She testified that she was threatened by a nonresident when she questioned his presence in the building. She testified that she reported the homeless person to the Landlord and that he responded that he is not a security guard. Ms. Lewis testified that one of the locks does not work and that there is a hole in the door where the other lock should be.

Ms. Lewis testified that she does not go out the back door of the building because there are scary people that congregate in the parking lot; therefore, she has to go out the front door of the building and go across the street to take out her trash.

The Landlord asserted that a contractor had installed new heavy duty locks at both exterior entrances on January 6, 2009, and had no-copy keys cut for all of the tenants. He asserted that several days later, someone broke the lock on the front door. He also testified that the locks often are vandalized by the tenants' guests. Mr. Deen testified that there are suspected drug dealers living at the Property and that the drug dealers or their customers frequently disable the locks in order to enter the building. He testified that the Landlord is cooperating with the Takoma Park Police Department to eliminate the drug activity in the building. The Landlord testified that he installed a pay phone outside the building but that it is not feasible to staff the lobby of a building of the size of that on the Property, and that installing an intercom system to enable tenants to buzz guests in would require the gutting of the building and would cost approximately $100,000.00. He testified that he

did not install security cameras because they would be destroyed by vandals within a few days.

The Landlord testified that the building did not have locks on the exterior doors until Code Enforcement insisted that he install the locks. He argued that the Property Maintenance Code only requires locks on the doors to individual units, not the entryway doors to the building, but that he installed locks after receiving pressure from the County. He testified that Code Enforcement issued a citation regarding the locks, alleging a violation of section 26-8(d)(4)(A) of the Property Maintenance Code, following the September 2008 inspection and that the court dismissed the citation because the building did not have locks installed. He said that after he installed the locks, Code Enforcement issued a new citation regarding the locks because the locks did not work, apparently alleging a violation of section 26-9(a)(2) of the Property Maintenance Code, Exhibit 7. He testified that he signed a contract to have the locks repaired in January 2009 and that he distributed the keys to the tenants in April 2009.

Mr. Deen testified that he constantly must check the locks to make sure that someone has not jammed them, but that the locks are now functioning.

C. Infestation.

The Tenant Association asserts that the building is infested with roaches and rodents. Code Enforcement inspections on September 24 and October 27, 2008, revealed roach and rodent infestations at the Property. Exhibit 3-D and 3-E. Ms. Lewis notified the Landlord that the infestations continued in a letter dated March 30, 2009. Exhibit 3-G.

The Landlord asserted that he has had a monthly extermination contract with Womack Pest Control for years, but that the extermination is only effective if all of the tenants cooperate with the exterminators. He testified that the tenants must not leave any open food in their units and must take their children outside to enable the exterminator to treat their units. He testified that some of the

tenants do not do so, and, therefore, the building remains infested. The Landlord submitted invoices for Womack's treatment of the property from November 2007 through March 2009. Exhibit 5 at pp. 77-85.

D. Parking lot lights and stair treads.

The Tenant Association asserts that the Landlord is liable for a defective tenancy because lights in the parking lot do not work and because the stair treads in the lobby were loose. Ms. Lewis notified the Landlord of these defects in a letter dated March 30, 2009, Exhibit 3-G, and that, as of April 20, 2009, the date she signed the Complaint, the Landlord had not corrected the defects. Ms. Lewis testified that the lights worked as of the hearing date.

The Landlord submitted an invoice signed by Mr. Deen for the repair of the stair treads dated April 24, 2009, Exhibit 5 at p. 76, and invoices for repairs to the parking lot lights dated June 20, 2008, February 6, 2009, and March 13, 2009, Exhibit 5 at pp. 69-71.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1. COLTA finds that the elevator at 636 Houston Ave. was out of service because of a comprehensive modernization of the control system for the elevator. The Landlord is responsible for restoring elevator service to the Property because section 6.16.050(C) requires that landlords maintain all electrical and other facilities and conveniences supplied in good working order.

2. Section 6.16.170.A authorizes tenants to file a defective tenancy complaint if a landlord has not rectified or made good-faith efforts to rectify a defective tenancy within one week of receiving notice of the defect. COLTA finds that in October 2007 a defective pump and valve rendered the continued operation of the elevator at the Property unsafe. The Commission further finds that Collins advised the Landlord that he should have the elevator modernized because it was becoming very difficult to find parts and that the Landlord promptly executed a contract authorizing

Collins to perform the modernization. The Commission finds that the parts necessary for the modernization had to be ordered, fabricated, and delivered, that the modernization required extensive labor, and that, under ideal circumstances, would have taken approximately five to seven months to complete. The Commission finds that the imposition of modern elevator code standards to the aging Property and the ever-changing and multiplying requirements of State, county, and private inspectors delayed the completion of the modernization and the issuance of the State certificate necessary to return the elevator to service.

The record does not contain any evidence that the Landlord or Collins did anything to delay the completion of the modernization or the satisfaction of the inspectors' requirements. Rather, the record indicates that the Landlord promptly authorized any additional work that had to be done, and that Collins performed its work as quickly as possible.

The Tenant Association did not present any evidence to support their claim that the Landlord could have reduced the amount of time that the elevator was out of service by replacing it with a new elevator.

Accordingly, the Commission finds that the Landlord made prompt and good faith efforts to repair the elevator and continued to do so until the elevator returned to service and holds that the Landlord is not liable to the tenants for causing a defective tenancy in connection with the elevator outage.

3. The Commission agrees with the Landlord that section 26-8(d)(4)(A) of the Property Maintenance Code requires that landlords install and maintain locks on the doors to the individual units in the Property–not on the lobby entrances–because that section requires locks on entry doors to individual units and "personal living quarters building[s]," which section 26-2 of the Property Maintenance Code defines as buildings where tenants sleep in separate units by share cooking

facilities. Therefore, the Commission finds that the Landlord's duty with respect to the locks did not arise until he installed the locks on January 6, 2009. The Commission finds credible the testimony of the Landlord and the resident manager that their efforts to maintain the locks have been thwarted by vandalism to the locks. The Tenant Association did not attempt to refute the Landlord's claim that the locks were vandalized after they were installed and that frequent vandalism of the locks continues.

Accordingly, the Commission finds that the Landlord timely made good faith efforts to repair the locks on the entryway doors of the Property and hold that the Landlord is not liable for a defective tenancy because of the broken locks.

4. The Commission finds, based on the uncontested assertions of the Landlord that he has Womack Pest Control treat the Property on a monthly basis and that Womack's efforts to eradicate the infestations are stymied by the failure by some of the tenants to prepare their units for the extermination, that the Landlord did not cause the Property to become infested with rodents or rodents and that the Landlord has made timely good faith efforts to eliminate the infestations. The Tenant Association did not dispute that the Landlord has the Property treated every month, did not allege that Womack's performance was substandard, and did not dispute the Landlord's claim that some of the tenants failed properly to prepare their units for treatment. Nor did the Tenant Association allege any action or inaction by the Landlord that would promote an infestation of the Property such as a failure to seal the exterior of the building or failure to remove garbage from the property. Accordingly, the Commission holds that the Landlord is not liable for a defective tenancy relating to the rodent and roach infestations at the Property.

5. COLTA finds that the Tenant Association failed to prove a defective tenancy with regard to the parking lot lights. Although Ms. Lewis stated in her March 30, 2009, letter that the

parking lot lights were not working, Ms. Lewis testified that she does not go into the parking lot. In addition, Ms. Lewis conceded that the lights were working at the time of the hearing but did not indicate when the lights stopped working or when they had been repaired. Finally, the Landlord submitted an invoice for the repair of the lights on March 13, 2009. Therefore, the Commission finds it more likely than not that Ms. Lewis was mistaken as to the status of the lights on March 30, 2009, and holds that the Landlord is not liable for a defective tenancy in connection with the parking lot lights.

6. Section 6.16.050 requires landlords to "[k]eep all areas of the rental facility, grounds, facilities, equipment and appurtenances in a clean, sanitary and safe condition." The Commission finds that the Landlord violated section 6.16.050 by failing timely to make good faith efforts to repair the stair treads in the lobby of the Property. The Commission finds that Ms. Lewis put the Landlord on notice of the loose stair treads by her letter of March 30, 2009, Exhibit 3-G, which the Landlord received on April 2, 2009, Exhibit 3-H. The Commission finds that the Landlord did not repair the loose stair treads until April 24, 2009, Exhibit 5 at p. 76, which was after the Tenant Association filed the Complaint in this proceeding. The Commission finds that the repair was a simple matter that could have been performed within a few hours, as evidenced by the fact that the Property Manager performed the repair by merely regluing the treads. Exhibit 5 at p. 76. The Commission further finds that the loose stair treads posed a safety hazard that should have been repaired promptly, without regard to the difficulty of performing the repair.

The Commission notes that the Landlord did not present any evidence of its efforts to repair the stair treads prior to April 24, 2009, and did not attempt to explain the delay in making the repair. Accordingly, the Commission holds that the Landlord is liable to the Tenant Association for causing a defective tenancy for failing timely to correct the loose stair treads. The Commission finds that the

defect affected all of the tenants of the Property because it was in the lobby and that the defect reduced the value of their tenancy by $15.00 per month ($.50 per day), that the Landlord is liable for the defect from April 2, 2009, through April 24, 2009, and that the Landlord shall pay $11.00 to each tenant that executed the Tenant Authorization of Representation Form in this proceeding, Exhibit 3-B, as damages for the defective tenancy.

IV. ORDER.

It is this 27th day of August 2009, by the City of Takoma Park Commission on Landlord-Tenant Affairs:

ORDERED that the relief requested in the Birchwood Tenant Association's Complaint is GRANTED IN PART AND DENIED IN PART; and

ORDERED that the Landlord, within 30 days of the date of this Order, shall pay $11.00 to the tenants represented by the Tenant Association in this proceeding as damages.

_____
Catherine Wakelyn, Presiding Commissioner

_____
Steve Wasser, 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.