

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

Catherine H. Saunders
666 Houston Ave., Apt. 304
Takoma Park, MD 20912

Tenant

v.

COLTA Case No. 09-09T

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 May 18, 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 she had a lifetime lease, that the Landlord stole documents from her Apartment, that she has a right to be relocated in her building under the Maryland Condominium Conversion statute,¹ and that the Landlord caused a defective tenancy by failing to address a rodent infestation in her Apartment. Exhibit 3.

The Landlord submitted a letter dated June 5, 2009, answering the Tenant’s Complaint, Exhibit 6, and supplemented its answer in letters dated September 9, 2009, Exhibit 8, and October 21, 2009, Exhibit 9. The Tenant submitted a letter dated July 13, 2009, responding to the Landlord’s answer. Exhibit 7.

The Commission has jurisdiction over the defective tenancy claim 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 October 27, 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. Joe Eberly of Maryland Termite and Pest Control, Inc., 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

¹ The Tenant advised the hearing panel that she had moved out of the Building and does not wish to pursue her lifetime lease claim or her condominium conversion claim.

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). Defective tenancy complaints must be filed within one year of the date of the occurrence. § 6.24.060(C).

The Commission does not have jurisdiction over the alleged theft of the Tenant’s documents, which is a criminal matter.

III. EVIDENTIARY SUMMARY.

The Tenant testified that her Apartment was infested with rodents since the commencement of her tenancy in 2003. She testified that she complained to the Landlord about the infestation as soon as she moved in and that the Landlord’s response was to put down “sticky boxes.” She claimed that the Landlord is dishonest. She stated that she caught a mouse in a mousetrap on July 4, 2009, and put it in a bag under a chair in her Apartment and showed it to the Landlord’s exterminator on September 15, 2009. The Tenant submitted a list of signatures attesting that her Building and the apartment building at 7401 New Hampshire Avenue are infested with rats, mice, and roaches. Exhibit 10.

During the hearing, the Tenant frequently yelled at and insulted the Landlord’s representatives and witnesses, made several bizarre and irrelevant proclamations, and accused the Commission of attempting to trick her by replacing her Complaint with a fraudulent document.

Michael Leftkowitz denied that the Tenant’s Apartment had a rodent infestation and asserted

that it had made substantial efforts to address any claimed infestations. He asserted that every unit in the Building is inspected two to three times per year by Maryland Termite and Pest Control, Inc. (“MTPC”), which inspects approximately five units per week. Exhibit 6. He asserted that MTPC also inspects any units where the tenants have reported a pest problem. Exhibit 6. Mr. Leftkowitz also denied that the Tenant had complained of a rodent infestation in her Apartment prior to the filing of the Complaint in this proceeding, noting that the Tenant did not raise the issue in the recent COLTA Complaint the Tenant filed in Case No. 09-03T. The Tenant filed that Complaint on February 25, 2009, and alleged that the Landlord had caused a defective tenancy because the balcony of her apartment was condemned and because of a defective kitchen floor. Mr. Leftkowitz asserted MTPC attempted to inspect the Tenant’s Apartment on May 26, 2009, after receiving notice of her Complaint, but that the Tenant refused to allow MTPC access to her Unit. Exhibit 6. The MTPC report dated May 26, 2009, corroborates this assertion. Exhibit 6. The Tenant responded that she refused to allow the exterminator to enter her Apartment on that date because he said he was going to treat her Apartment with an insecticide spray, and she is allergic to the spray. Exhibit 7.

The Landlord submitted nine service reports from MTPC for inspections of the Tenant’s Apartment performed between May 1, 2008, and October 20, 2009, which indicated that it treated the unit for rodents but that no evidence of a rodent infestation was found. Exhibits 6, 8, and 9. One MTPC report, dated September 15, 2009, indicated that there was minor evidence of the presence of rodents. Exhibit 9. Joe Eberly of MTPC testified that he reported some evidence of rodents on that date because the Tenant presented him with a mouse in a bag, which she claimed to have been caught in her Apartment. In a letter dated September 4, 2009, MTPC President James Daugherty explained that whenever MTPC services a unit, it inspects the unit for all types of pests and treats the unit for any pests found. Exhibit 8.

Mr. Leftkowitz asserted that the Montgomery County Code Enforcement Office has inspected the Tenant's Apartment five times since September 2007 without finding a rodent infestation. The Code Enforcement Office conducted an inspection of the Tenant's unit on July 29, 2009, and the inspection report stated that, although the Tenant reported a rodent infestation, "no evidence of infestation could be found." Exhibit 9. The Landlord also submitted County inspection reports from inspections performed in the Apartment on September 26, 2007, December 29, 2008, and September 30, 2008, none of which note the presence of rodents. Exhibits 8-9.

Joe Eberly of MTPC testified that he has been an exterminator for 12 years. He testified that he has inspected the Tenant's Apartment many times and has never seen any evidence of rodents. He testified that when tenants are allergic to chemical sprays, he uses gel baits and sticky traps in their units.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1. The Commission finds that the Tenant failed to prove that her Apartment was infested with rodents. The only evidence of a rodent infestation presented by the Tenant was her own testimony and the attestation regarding the Tenant's Building and the apartment building at 7401 New Hampshire Avenue, Exhibit 10. In contrast, the Landlord submitted documentation of 15 inspections of her Apartment by the Montgomery County Code Enforcement Office and MTPC over the past several years that did not reveal any evidence of a rodent infestation. The Commission finds the documentation that the Landlord submitted and the testimony to the exterminator to be more credible than the Tenant's testimony and documentation. The Commission notes that the attestation did not include the addresses of the individuals that signed it, and therefore is not a reliable source of evidence as to the conditions of the Tenant's Building. The Commission further notes that the fact that the Tenant did not complain about a rodent infestation in the COLTA Complaint she filed on

February 25, 2009, alleging two other defective tenancies contradicts her claim that her Apartment has been infested since 2003 and, therefore, undermines her credibility.

2. The Commission further finds that, even assuming that there was a rodent infestation in the Tenant's Apartment, the Landlord is not liable for a defective tenancy because the Landlord made timely good faith efforts to eradicate the infestation. The Commission finds, based on the documentation that the Landlord submitted, that the Landlord had MTPC treat every unit in the Building three times per year and that, when a tenant complained about an infestation, that tenant's unit was treated within one week. The Commission further finds that the Landlord had MTPC attempt to treat the Tenant's unit within one week of receiving the Tenant's Complaint in this proceeding, which the Commission finds to be the first time the Landlord received notice of an alleged rodent infestation since the Tenant filed a Complaint in the District Court of Maryland for Montgomery County in August 2006, Exhibit 7(which the court dismissed, Exhibit 9) and had MTPC treat her Apartment seven times since receiving her Complaint, Exhibit 9.

V. ORDER.

It is this 11th day of November 2009, by the City of Takoma Park Commission on Landlord-Tenant Affairs, ORDERED, that the relief requested by the Tenant, Catherine Saunders, is DENIED.

Robert Liebreich, 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.

V:\StaffShare\Website\COLTA.Case.Request.FINAL.ORD.7.01.15\Saunders v. Tenacity NH Ave. LLC et al 09-09T.wpd