

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

Carlos Henson
8314 Roanoke Avenue, Apt. 2
Takoma Park, MD 20912

Tenant

v.

8314 Roanoke Ave., LLC
c/o Reden Management/Eric Denchfield
11912 Maple Ave., Ste C
Rockville, MD 20853

Landlord

COLTA Case No. 09-18T

OPINION AND ORDER

I. INTRODUCTION.

On September 17, 2009, Carlos Henson (“Tenant”), a tenant of 8314 Roanoke Avenue, Apt. 2, Takoma Park, Maryland (“Apartment”) filed a Complaint with the City of Takoma Park, Commission on Landlord-Tenant Affairs (“COLTA” or “Commission”) against 8314 Roanoke Ave., LLC (“Landlord”), the owner of the rental facility located at 8314 Roanoke Avenue (“Property”). This Complaint was docketed as COLTA Case No. 09-18T.

The Tenant’s Complaint alleged that the Landlord was charging him a monthly rent that was higher than the rent amount allowed for his Apartment under the City’s rent stabilization law. As relief, the Tenant requested that the rent be reduced to the legal amount and for reimbursement of all

rent overcharges. The Complaint further alleged that Landlord caused a defective tenancy by failing to pay the electric bill for the common areas of the Property, which resulted in the electric service being shut off. Exhibit 2. As relief for the defective tenancy, the Tenant requested \$25.00 per month in damages. The Landlord did not respond to the Complaint. 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 Tenant's Complaint on November 17, 2009. The Tenant was present at the hearing. No representative attended the hearing on behalf of the Landlord. 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.

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. Annual rent stabilization increases that a landlord did not assess a current tenant in a particular year may not be recouped from that tenant in a later year. However, these authorized annual rent increases may be "banked" and charged to a new tenant provided the apartment became vacant because the tenant voluntarily vacated the apartment or the landlord terminated the tenancy for cause. *See* Sections 6.20.060(A)(3) and 6.20.070. Complaints regarding illegal rents must be filed within three years of the date of occurrence. Section 6.24.060(B).

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

III. EVIDENTIARY AND HEARING SUMMARY.

The Tenant testified that he moved into the Apartment on November 15, 2008. According to the Tenant's lease, the Tenant entered into a one year tenancy commencing on November 1, 2008, with monthly rent of \$850.00. The Tenant submitted documentation of his monthly rental payments from November 2008, through August 2009. Exhibits 5-12. He testified that he paid rent of \$850 for September and October 2009, but that he has not paid his November 2009 rent. The Tenant's documentation indicates that he paid the full rent for November 2008, and then paid only half the rent—\$425.00—for December 2009, apparently as a result of the prorated amount he should have paid for November.

According to City of Takoma Park Housing Specialist Jean Kerr, the maximum legal rent for the Apartment at the commencement of the Tenant's tenancy in November 2008 was \$693.00. Exhibit 15. This figure is based upon the 2006 Annual Rent Report filed with the Housing Office by the Landlord, which indicated a maximum allowable rent of \$658.00 at that time, Exhibit 14, and the application of the annual rent stabilization allowances for 2007 (2.8%) and 2008 (2.5%). Exhibit 15.

Regarding the defective tenancy claim, the Tenant testified that, while he was out of town in

late July 2009, his fiancée, who was staying at his Apartment, notified him that the electricity for the common areas of the Property had been cut off. As a result, the hallways of the Property are unlit and the Tenant is unable to use the laundry room in the Property. Exhibit 2. The Tenant testified that he notified the building manager, Yancey Suber, and that Mr. Suber stated that he was unaware that the electricity had been cut off. The Tenant testified that the electrical service had not been restored as of the date of the hearing.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1. The Commission finds that the Tenant's tenancy in the Apartment commenced on November 15, 2008, that the Tenant paid rent to the Landlord of \$850.00 per month from November 15, 2008, through October 31, 2009.

2. The Commission finds that the legal rent for the Apartment is \$693.00 per month. The Commission finds that the maximum allowable monthly rent for the Apartment from March 2006 through February 2007 was \$658.00; that applying the annual rent stabilization allowance for 2007, 2.8%, resulted in a maximum allowable monthly rent of \$676.00 for March 2007 through February 2008; and that applying the annual rent stabilization allowance for 2008, 2.5%, resulted in a maximum allowable monthly rent of \$693.00 from March 2008 through February 2009. The Commission finds that the Landlord was entitled to charge the maximum allowable rent of \$693.00 at the commencement of the Tenant's tenancy pursuant to section 6.20.070(A). Accordingly, the Commission finds that Tenant was overcharged \$235.50 for November 15, 2008, to December 31, 2008 (\$1,275.00 (1.5 x \$850.00) rent charged less \$1,039.50 (1.5 x \$693.00) legal rent), and \$1,570.00 for January 1, 2009, through October 31, 2009 (\$850.00 per month rent charged less

\$693.00 legal rent equals \$157.00 per month rent overcharge times 10 months equals \$1,570.00).¹

The Commission holds that the Landlord must reimburse the Tenant \$1,805.50 for illegal rents collected. The Commission further holds that the monthly rent for the Apartment shall be reduced to \$693.00 until the Landlord becomes eligible to increase the rent for the Apartment pursuant to an annual rent stabilization allowance (following proper notice to the Tenant) or pursuant to a Fair Return Rent Increase Petition.

3. The Commission holds that the Landlord is liable for a defective tenancy because of its failure to maintain electrical service for the common areas of the Property. The Commission finds credible the testimony of the Tenant that the power was cut off in late July 2009, that the power remains off, and that the Tenant notified the Landlord of the problem. Moreover, the Commission finds that the Landlord was on notice that the power was cut off because the Landlord must have been aware that it had not paid the electrical bill and because it must have received notice from Pepco before it cut off the power. Section 6-26(a) of the Montgomery County Code, which is applicable to residential rental facilities in the City of Takoma Park under section 6.12.020 of the Takoma Park Code, requires that landlords provide electric service to all common areas of a rental facility. The Commission finds that the Landlord failed to make a good faith effort to remedy the defect based on the absence of any evidence that the Landlord has attempted to restore the electric service and the fact that the Property remained without electric service as of the date of the hearing. Accordingly, the Commission finds that the Landlord is liable for causing a defective tenancy with respect to the

¹ The Commission notes that the Landlord is not entitled to a rent increase pursuant to the 2009 annual rent stabilization allowance because the Tenant occupies the Apartment, and, therefore, the rent may not be increased more than once in a twelve month period and the Landlord must provide the Tenant with two months' written notice before implementing a rent increase.

lack of electric service to the common areas of the Property.

The Commission finds that the lack of electricity in the common areas, which renders the hallways dark and unsafe, and prevents the Tenant from using the laundry room, thereby requiring him to travel to a laundromat to do his laundry, reduces the value of the tenancy by at least \$25.00. Therefore, the Commission awards the Tenant the requested damages of \$25.00 per month for August 2009 through October 2009, for a total of \$75.00. Because the defect has not been corrected, the Tenant's monthly rent shall be reduced by \$25.00 until the Landlord corrects the defect.

V. ORDER.

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

ORDERED, that the legal rent for the Apartment is \$693.00 per month; and

ORDERED, that the rent for the Apartment shall be further reduced by \$25.00 per month, to \$668.00, until the Landlord restores electric service to the common area of the Property; and

ORDERED, that the Landlord shall pay to the Tenant, Carlos Henson, \$1,880.50 as damages for charging an illegal rent and for causing a defective tenancy; and

ORDERED, that the Tenant, Carlos Henson, is authorized to withhold \$1,880.50 from subsequent months' rent for the Apartment;² and

ORDERED, that in the event the Tenant vacates the Apartment prior to withholding a total of \$1,880.50 in rent payments, then, within 30 days after written demand from the Tenant, the Landlord

² I.e., if the Landlord has not paid the Tenant the damages awarded to him and has not restored electrical service to the common are of the Property, the Tenant is entitled to withhold his \$668.00 rent payment for November 2009 and December 2009 (2 x \$668.00 = \$1,336.00) and, for January 2010, deduct \$544.50 (\$1,336.00 + \$544.50 = \$1,880.50) from his rent payment and pay the Landlord \$123.50 for the remainder of the January rent.

shall pay the Tenant all of the remaining balance of the excess rent money paid by the Tenant for the illegal rent and the damages awarded for the defective tenancy; and

ORDERED, that the Landlord immediately shall restore electric service to the common areas of the Property.

Steve Wasser, Commissioner

Peter Munger, 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.