

CITY OF TAKOMA PARK
COMMISSION ON LANDLORD-TENANT AFFAIRS

Josephine Battle
10916 Breewood Road
Silver Spring, MD 20901

Tenant

v.

Angie Giakoumatos
8218 Roanoke Avenue.
Takoma Park, MD 20912

Landlord/Owner

COLTA Case No. 09-17T

OPINION AND ORDER

I. INTRODUCTION.

On August 31, 2009, Josephine Battle (“Tenant”), a former tenant of 8218 Roanoke Avenue, Apartment 2, Takoma Park, Maryland (“Apartment”), filed a Complaint with the City of Takoma Park Commission on Landlord-Tenant Affairs (“COLTA” or “Commission”) against Angie Giakoumatos (“Landlord”), the owner of the rental facility located at 8218 Roanoke Avenue (“Property”). This Complaint was docketed as Case No. 09-17T.

The Tenant’s Complaint alleged that the Landlord failed to return her security deposit of \$730.00 and interest thereon and sought an award of three times the amount wrongfully withheld. Exhibit 3. The Landlord filed a Response to the Complaint alleging that the Tenant had caused

damages to the Apartment that exceeded the value of the Tenant's security deposit and that she timely sent the Tenant a statement of the costs incurred to correct the damages. Exhibit 5.

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 and the Landlord were 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).

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 3% per annum for each six-month period. *Md. Code Ann.*, Real Prop. Art., §8-203(e).

III. EVIDENTIARY AND HEARING SUMMARY.

The Tenant entered into a one year lease for the Apartment commencing on November 1, 2005, and paid a security deposit of \$730.00. Exhibit 4. By letter dated May 28, 2009, the Tenant notified the Landlord that she would be vacating the Apartment on July 1, 2009. Exhibit 3 at p. 4. The Tenant, in her letter, advised the Landlord of her new address. The Property is a single family home that the Landlord divided into two rental units, and the Tenant's Apartment was located in the

basement of the Property.

In a letter dated August 9, 2009, the Landlord listed the alleged damages caused by the Tenant, the costs incurred to correct the damages, and the portion of the costs she was assessing against the Tenant's security deposit. Exhibit 5 at pp. 3-4. The Landlord expressed outrage at the condition of the Apartment, calling it "appalling" and "disgusting." The Landlord notified the Tenant that the costs exceeded the amount of the security deposit and accrued interest and that she was withholding her entire security deposit. Exhibit 5 at p. 4. The Landlord, on August 19, 2009, mailed the Tenant copies of the receipts and all but one of the cancelled checks for the repair and cleaning of the Apartment. Exhibit 5 at pp. 5-8. On September 15, 2009, the Landlord mailed the Tenant the remaining cancelled check. Exhibit 5 at pp. 9-10.

The Landlord's August 9 letter provided the Tenant with the following accounting of her security deposit:

Security Deposit held:	\$730.00
Interest:	73.00
Total Deposit:	\$803.00
Charges for damages:	
• Additional rent for 7/10/09	\$ 25.32
• Brand new kitchen cabinets severely damaged, de-valued, filthy, shelves missing front veneers, under sink-appalling condition with ruined shelf, missing knobs	225.00
• Refrigerator-totally destroyed/filthy replaced (\$578.95 cost)	289.48
• Range-de-valued, filthy, enamel chipped I two areas, oven filthy, top-filthy	50.00
• Carpeting-totally destroyed-had to be replaced (new carpet installed \$1,220.00)	610.00
• Cleaning and repairs	700.00
• Brand new medicine cabinet damaged	75.00

Items missing from apartment:

- Brand new bathroom picture wall hanging 45.00
- Brand new cutting board 10.00
- Brand new Nautica white bathroom soap dish 15.00
- Brand new bathroom shade and screen 55.00

Total Charges for Damages: \$2,099.80

The Landlord testified that the Apartment was in excellent condition when the Tenant moved in and that the Tenant was the first person to move in after she had the kitchen remodeled. The Landlord submitted 29 photographs that revealed extensive filthy conditions and damages throughout the Apartment and the common area of the Property. Exhibit 6.

The Tenant's Complaint did not explain the grounds for her claim that the Landlord's withholding of her security deposit was improper. At the hearing, in presenting her case, the Tenant repeated the statutory requirement that landlords withholding any portion of tenant's security deposit provide the tenant with a statement of the damages and the costs incurred to repair the damages. Only after the Commission asked her to address the damages claimed by the Landlord did the Tenant attempt to refute that damages claimed by the Landlord.

The Tenant testified that she vacated the Apartment on July 1, rather than July 2 as asserted by the Landlord. She testified that the Landlord did a walkthrough of the Apartment with her on July 2, 2009, and that the Apartment was clean. The Tenant then discussed the photographs submitted by the Landlord.

The Landlord submitted a photograph of the interior of the cabinet under the kitchen sink in which the bottom of the cabinet was stained and filthy. Exhibit 6 at p. 7. The Tenant conceded that the photograph of the cabinet under the kitchen sink was from her Apartment, but she testified that the damage to the cabinet was the result of a plumbing leak, which she said she had reported to the

Landlord.

The Landlord submitted photographs of a refrigerator with broken door shelves and shelf brackets and a pool of sludge in the bottom. Exhibit 6 at pp. 3-6. The Tenant testified that the refrigerator in her Apartment was not new when she moved in, denied breaking the refrigerator, and claimed that she did not recognize the refrigerator in the photograph and was not sure whether it was from her Apartment.

The Tenant testified that she did not recognize most of the Landlord's other photographs and was not sure whether they were from her Apartment. However, she conceded that the Landlord's photographs of the bathtub, Exhibit 6 at p. 16, which revealed extensive mildew stains on the wall and tile around the tub, were from her Apartment. She testified that the stains were the result of the fact that the bathroom did not have an exhaust fan.

The Tenant testified that she cleaned the carpets with a machine that she rented from Giant prior to moving out. She did not present documentation of her rental of the carpet cleaner. She testified that the carpet had been damaged during a flood earlier in her tenancy and that she had hired a professional carpet cleaner at that time, but that the carpet should have been replaced after the flood. The Landlord testified that the flood occurred three years ago.

The Landlord submitted photographs of the inside of a filthy oven. Exhibit 6 at pp. 9-10. The Tenant testified that she cleaned the oven with oven cleaner before she moved out. The Landlord testified that it was a self-cleaning oven and that, if the Tenant had tried to clean the oven, she would know that.

The Landlord testified that she has been a landlord for many years and she has never had a tenant leave their unit in as deplorable condition as the Tenant. She testified that it appeared that the Tenant had never cleaned the Apartment. She testified that the Tenant was lying about the

condition of the Property upon move-out. She testified that the Tenant left the walkthrough when she complained about the condition of the Apartment. She testified that the tenant in the upstairs unit of the Property told her that the Tenant did not have a vacuum cleaner, that the Tenant borrowed his vacuum cleaner to clean her Apartment before she moved out, and that it was clogged with debris when she returned it to him. He also told her that the Tenant left the washing machine in the common area of the Property so dirty that he would have to run the washer before using it to clean his clothing. The Landlord denied ever receiving notice of a leak under the kitchen sink.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1. The Commission finds that the Tenant had a one year tenancy commencing on November 1, 2005, and that the tenancy converted to a month-to-month tenancy by operation of law on December 1, 2006.

2. The Commission finds that the Tenant paid a security deposit of \$730.00 on November 1, 2005. Exhibit 4.

3. The Commission finds that the Tenant gave written notice to the Landlord on or about May 28, 2009, that she would be vacating the Apartment on July 1, 2008, and that the Tenant did vacate the Apartment on that date.

4. The Commission finds that the Tenant's \$730.00 security deposit accrued interest at the statutory rate of 3% per annum from November 1, 2005, through July 1, 2009, amounting to a total of \$76.65.

5. The Commission finds that the Landlord complied with Section 8-203(g) of the Real Property Article of the *Maryland Code*, which required that she send to the last known address of the tenant, within 45 days of the termination of the tenancy, a "written list of damages claimed . . .

together with a statement of the cost actually incurred.” Specifically, the Commission finds that the Landlord’s August 9, 2009, letter to the Tenant, receipt of which the Tenant does not dispute, satisfied the foregoing requirement. The Commission notes that Section 8-203(g) does not require landlords to provide tenants with documentation in support of the list of damages.

6. The Commission finds that the Landlord properly withheld the Tenant’s entire security deposit plus accrued interest. The Commission finds the Landlord’s correspondence and testimony regarding the damages caused by the Tenant and the costs incurred to correct those damages to be credible, and the photographs of the condition of the Property upon the termination of the tenancy and the receipts, invoices, and canceled checks corroborate the Landlord’s testimony.

The Commission does not find the Tenant to be credible for several reasons. First, the Tenant appears to have believed that she was entitled a refund of her security deposit because the Landlord did not provide her with all of the receipts for the repair and cleaning of the Apartment with the statement of damages, as her Complaint did not allege that the Landlord had falsified the damages. Second, the Tenant’s demeanor was very casual when she was faced with the Landlord’s vehement testimony accusing her of living in squalor and the Landlord’s photographs of the filthy conditions of her Apartment. Third, the Tenant conceded that the photographs of the mildew-covered bathroom were from her Apartment, which corroborates the Landlord’s claim that the Tenant did not keep a clean house. Fourth, the Commission does not believe that the Tenant, after living in the Apartment for more than three years, would be unable to tell whether the Landlord’s photographs were taken in her Apartment. Finally, the Tenant did not have any photographs, documents, or witnesses to corroborate her testimony. The Commission finds, based on the Landlord’s testimony and the photographs of the damage to the Apartment, that the damages did not constitute normal wear and tear. Accordingly, the Commission finds that the Landlord was entitled

to withhold from the Tenant's security deposit the damages claimed in her letter of August 9, 2009.

Because those damages exceeded the amount of the Tenant's security deposit plus accrued interest, the Commission holds that the Landlord properly withheld the Tenant's entire security deposit.

V. ORDER.

Upon consideration of the Complaint, exhibits, and any evidence presented at the hearing in this case, it is this _____ day of November 2009, by the City of Takoma Park

Commission on Landlord-Tenant Affairs:

ORDERED, that the relief requested by the Tenant is DENIED.

Jarrett Smith, Presiding Commissioner

Dorothy Clennon, Commissioner

Lauren Price, 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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