

CITY OF TAKOMA PARK  
COMMISSION ON LANDLORD-TENANT AFFAIRS

Aaron Lavallee and  
Morgan Pinnell  
2904 Taylor St.  
Mount Rainier, MD 20712

Tenants

v.

Luis and Rosa Mendez  
15636 Twin Valley Ct.  
Silver Spring, MD 20906

Landlord/Owner

COLTA Case No. 10-08T

**OPINION AND ORDER**

**I. INTRODUCTION.**

On May 28, 2010, Aaron Lavallee and Morgan Pinnell (“Tenants”), the former tenants of the single family home located at 6637 Eastern Avenue, Takoma Park, Maryland (“Property”), filed a Complaint with the City of Takoma Park Commission on Landlord-Tenant Affairs (“COLTA” or “Commission”) against Luis and Rosa Mendez (collectively, “Landlord”), the owners of the Property. This Complaint was docketed as COLTA Case No. 10-08T.

The Tenants’ Complaint alleged that the Landlord improperly failed to return their security deposit. The Tenants sought the return of their security deposit plus interest and punitive damages.

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 August 19, 2008. The Tenants were present at the hearing. The Tenants, as the parties filing the Complaint, have the burden of proof by a preponderance of the evidence. *Takoma Park Code* §6.24.080.J. Luis Mendez and his son, Richard Mendez, were present on behalf of the Landlord.

## **II. APPLICABLE LAW.**

Section 8-203 of the Real Property Article of the *Maryland Code*, 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, to return the remaining security deposit to the tenant and provide the tenant with 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. *Md. Code Ann.*, Real Prop. Art., §8-203(e).

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

The Tenants entered into a lease for the Property commencing on March 1, 2008, and terminating on February 28, 2009, and paid a security deposit of \$1,850.00. Exhibit 4. The Tenants entered into a second lease for the Property commencing on March 1, 2009, and terminating on February 28, 2010. Exhibit 4(A). After the expiration of the lease term, the Tenants remained in the Property as a month-to-month tenant for one month. In a letter dated February 23, 2010, the Tenants notified the Landlord that they intended to vacate the property on March 31, 2010. Exhibit

2-H. The Tenants vacated the Property on March 31, 2010, in accordance with their notice. Exhibit 2. The Tenants had scheduled a walk-through of the Property with Luis Mendez on March 31, 2010, but Mr. Mendez did not come to the Property for the walk-through. Exhibit 2-B. The Tenants and Mr. Mendez conducted the walk-through on April 3, 2010. Exhibit 2-B. According to the Tenants, Mr. Mendez advised them that they must perform several cleaning tasks before they would receive a refund of their entire security deposit. Exhibit 2B. The Tenants advised Mr. Mendez that many of the issues cited by the Landlord were caused by the Landlord's contractors after the Tenants had vacated the Property. Aaron Lavalley testified that he gave the Landlord his new address during the walk-through. The Tenants memorialized the April 3, 2010, walk-through and stated their new address in a letter to the Landlord dated April 5, 2010, Exhibit 2-B, which they sent to the Landlord via certified mail. Exhibit 5. The Post Office attempted to deliver the letter and notified the Landlord of the letter on April 6, 2010.

The Tenants sent another letter to the Landlord via certified mail on May 21, 2010, again providing their new address. Exhibit 5. The Landlord refused the certified letter on May 25, 2010.

When the Tenants filed their Complaint on May 28, 2010, the Landlord had not returned any portion of the Tenants' security deposit and had not sent the Tenants a written list of damages caused by the Tenants or a statement of the costs incurred to repair the damages. Exhibit 2.

In a letter dated May 28, 2010, City of Takoma Park Housing Specialist Moses A. Wilds, Jr. transmitted the Tenants' Complaint to the Landlord.

According to Morgan Pinnell, she provided her new address to the Landlord via telephone during the first week of June 2010, and the Landlord called her to request her new address on June 10, 2010. Exhibit 5.

Mr. Lavalley testified that he and Ms. Pinnell were frustrated because the Landlord ignored

their calls and letters regarding their security deposit and did not provide any explanation for withholding their security deposit until they filed a COLTA Complaint. He also testified that the withholding of their security deposit for more than two months was burdensome because he and Ms. Pinnell had just purchased a new home.

The Landlord, in a letter dated “June 2010,” advised the Tenants that he had deducted \$132.00 from their security deposit, which was one half of the charge for repairs to the front porch and landscape work performed by Arthur Newsome. Mr. Newsome’s typewritten invoice was dated June 8, 2010, but was modified by hand to indicate a date of April 8, 2010. Exhibit 6. The Landlord provided the following accounting for the Tenants’ security deposit:

\$1850.00	
+\$86.50	Interest accrued
= \$1936.00	
-\$132.00	½ the price of the original charge of \$265.00 from Arthur Newsome Contractor
= \$1804.00	

The Landlord’s letter was post marked June 11, 2010. Exhibit 6. The Landlord enclosed a check made out to the Tenants for \$1,804.00 with the letter. The Landlord stated in the letter that the return of the security deposit was delayed because he did not have the Tenants’ new address. Luis Mendez testified that his interest calculation was based on the actual interest earned by the Tenants’ security deposit.

Richard Mendez testified that his family has owned the Property since 1971 and has been renting the Property since 1976. He testified that they did not intend to withhold the security deposit but that there was a “miscommunication” and they did not receive the Tenant’s address until June, when Luis Mendez spoke with Ms. Pinnell via telephone. He testified that the Tenants’ Complaint was only the second COLTA complaint against them. He testified that he and his father have full-time jobs, and that his mother does not accept certified mail because she is afraid someone

will try to sue them. Mr. Mendez testified that they could have mailed the Tenants' security deposit to the Property, which was the Tenants' last known address, but that they overlooked that possibility. He testified that the June 8, 2010, date on the repair invoice was an error.

Mr. Lavallee testified that the Landlord owns multiple rental properties. He also noted that the Commission found the Landlord to have violated the security deposit law in the Landlord's previous case. Mr. Lavallee also noted that even after Mr. Wilds transmitted their Complaint to the Landlord with their new address, the Landlord did not immediately send them a check.

#### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

1. The Commission finds that the Tenants entered into one-year leases for the Property commencing on March 1, 2008, and March 1, 2009. Exhibits 4 and 4-A. The Commission finds that the tenancy converted to a month-to-month tenancy by operation of law on March 1, 2010.

2. The Commission finds that the Tenant paid a security deposit of \$1,850.00 on or about February 18, 2008. Exhibit 4.

3. The Commission finds that the Tenants gave the Landlord written notice of their intent to vacate the Property on February 23, 2010, and that the Tenants vacated the Property on March 31, 2010.

4. The Commission finds that the Landlord did not comply with section 8-203(g) of the Real Property Article of the *Maryland Code*, which required the Landlord to send to the last known address of the Tenant, within 45 days of the termination of the tenancy, a written list of damages claimed along with a statement of actual costs incurred or to return the security deposit, together with interest, to the Tenant. Because the Tenant vacated the Property on March 31, 2010, the Landlord was required to make any necessary repairs to the Property, return the remainder of their security deposit, and provide them with an explanation of any withholdings by May 15, 2010. The

Commission finds that the Landlord mailed the tenant a refund of \$1,804.00 and a written explanation of the damages claimed and costs incurred on June 11, 2010. Accordingly, the Commission holds that the Landlord forfeited its right to withhold any portion of the Tenant's security deposit.

5. The Commission finds that the Tenant's \$1,850.00 security deposit accrued simple interest at the statutory rate of 3% per annum, accrued at six month intervals, from February 18, 2008, through June 11, 2010. This period includes four six-month periods, with interest of \$27.75 accruing for each six-month period, amounting to a total of \$111.00 interest due through June 11, 2010. Therefore, the Commission finds that the Landlord should have refunded to the Tenants \$1,961.00, and that the Tenants are entitled to a further refund of their security deposit in the amount of \$157.00 ( $\$1,850.00 + \$111.00 - \$1,804.00$ ).

6. The Commission finds that punitive damages are appropriate and awards the Tenants punitive damages in the amount of \$980.50, which is one half of the amount wrongfully withheld. In awarding punitive damages of one half the amount wrongfully withheld, the Commission notes that the Landlord demonstrated a brazen disregard for its responsibilities as a landlord and for the Tenants' rights. The Commission does not find credible the Landlord's assertion that it did not return the Tenants' security deposit because he did not have their address. Even assuming that the Landlord did not have the Tenants' address, the Commission notes that the Landlord made no effort to obtain the Tenant's address. In addition, section 8-203(g)(1) of the Real Property Article of the *Maryland Code* specifically requires landlords to mail the security deposit refund to a tenant's last known address. The Commission also notes that the Landlord's practice of ignoring or refusing certified mail constitutes a willful neglect of its duties that, again assuming that its claim that it did not know the Tenants' address is true, directly prevented it from obtaining the Tenants' address.

**VI. ORDER.**

Upon consideration of the complaint, exhibits, and any evidence presented at the hearing in this case, it is this 13th day of August 2010, by the City of Takoma Park Commission on Landlord-Tenant Affairs:

ORDERED, that the Landlord shall pay to the Tenants \$1,137.50 as a refund of the Tenants' security deposit plus accrued interest and punitive damages; and

ORDERED, that the Landlord shall comply with this Order within fourteen days; and

ORDERED, that if the Landlord does not pay the amount awarded to the Tenants within fourteen days of the date of this Order, the award will accrue interest at the judgment rate of interest under the Courts and Judicial Proceedings Article of the *Maryland Code*.

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Peter Munger, Presiding Commissioner

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Robert Liebreich, Commissioner

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Victoria Sutton, 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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