

CITY OF TAKOMA PARK
COMMISSION ON LANDLORD-TENANT AFFAIRS

Beth Henson

Tenant

v.

Exit Realty, et al.

Landlord

COLTA Case No. 10-25T

OPINION AND ORDER

I. INTRODUCTION.

On May 28, 2010, Beth Henson (“Tenant”), the former tenant of the single family home located at 400 Boston Avenue, Takoma Park, Maryland (“Property”), filed a Complaint with the City of Takoma Park Commission on Landlord-Tenant Affairs (“COLTA” or “Commission”) against Vivian S. Walker and Jay Douglas Dykhouse, the owners of the Property and Beth Truman and Donna Beausoleil of Exit Realty Solutions, the Owners’ agents (collectively, “Landlord”). This Complaint was docketed as COLTA Case No. 10-25T.

The Tenant’s Complaint alleged that the Landlord improperly failed to return a portion of her security deposit. Exhibit 3. The Tenant sought the return of her security deposit plus interest and

punitive damages. The Landlord filed a written response to the Complaint alleging that the deductions from the Tenant's security deposit were proper. 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 February 8, 2011. The Tenant was 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. Beth Truman and Donna Beausoleil 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 Tenant entered into a one-year lease for the Property commencing on September 1, 2007. The Tenant paid a security deposit of \$5,200.00 on August 14, 2007. Exhibit 4. The Tenant vacated the Property on October 30, 2010, after providing written notice to the Landlord. Exhibit 3.

In a letter dated November 26, 2010, the Landlord refunded to the Tenant \$3,436.50 from her security deposit. Exhibit 3. The Landlord provided the following accounting for the Tenant's security

deposit:

Amount of Deposit	\$5,200
Interest on Deposit Due You	<u>\$ 468</u>
Total	\$5,668

Late payment on August 2009, received 8/11/09	\$ 130
Late payment on Nov 2009, check returned Nov.	\$ 130
Bad Check Fee, November 2009 (\$25 each case)	\$ 15
Bad Check Fee, January 2010 (\$25 each case)	\$ 15
Late Fee February 2010	\$ 130
Late Fee March 2010	\$ 130
Court Costs March 2010	\$ 14
Late Fee October 2010	\$ 137.50

Refinishing Floor in Upper Room - Damage from Plant and dog urine on Hardwood Floors. We are charging you 1/2 of the cost since there was some addition damage that was not your responsibility.

\$ 1,000

Clearing/snaking the laundry room sink which was stuffed up with mud and hair.

\$ 45

Six blinds needed replacement (3 in master bedroom, 2 in downstairs bedrooms and 1 of the Kitchen door blinds).

\$ 210

Two window screens are damaged and are coming out of the frames.

\$ 100

Two window sills are scratched from the dogs & need to be sanded, patched & painted.

\$ 175

Total costs for repairs: \$2,231.50

The final amount we are returning to you is \$3,436.50.

The Tenant generally denied causing the damages alleged by the Landlord. The Tenant submitted receipts for work she had performed on the Property in preparation for her move-out. Exhibit 6. However, the Tenant conceded that she had paid her rent late for several months because of changes to her banking arrangements. The Tenant also conceded that the person she hired to clean the house

may have clogged the laundry room sink. The Tenant argued that the Landlord had forfeited its right to withhold any money from her security deposit because it did not provide her with copies of receipts documenting the costs incurred to correct the alleged damages.

Beth Truman of Exit Realty argued that the Tenant had caused the damages asserted in its November 26, 2010, letter. The Landlord also asserted that the Tenant had damaged the Property in several additional respects but that it decided not to charge the Tenant for all of the damage she caused. The Landlord submitted a "Job Proposal" from Altru Real Estate Renovators, LLC ("Altru"), dated December 14, 2010, that included refinishing the floors (\$1,000.00), replacing the blinds and window screens (\$310.00), and repairing the window sills (\$175.00). Exhibit 5. Ms. Truman testified that Altru is her husband's contracting company. The Landlord submitted an estimate dated December 9, 2010, from Brazilian Floors, LLC, for \$1,857.50, which included sanding and finishing (\$1,107.50), sanding and finishing 13 steps (\$350.00), "Flush Vents 4x10" (\$100.00), and repairing eight square feet (\$300.00). The estimate included a handwritten notation that the work was to be performed on January 10, 2011, and that a deposit of \$928.75 was sent on December 31, 2010. Exhibit 5. The Landlord submitted a copy of a check dated November 4, 2010, to Abdool Rahim for \$120.00 with a memo indicating that the check was for the repair of the laundry room and the master bathroom tub. Exhibit 5. Ms. Truman testified that the Tenant was not charged for the repair of the bathroom tub. Ms. Truman conceded at the hearing that she provided the Tenant with only an estimate of the cost of repairing the alleged damages in her November 26, 2010, letter transmitting the partial refund of the Tenant's security deposit, except that the plumbing repairs were completed and paid for immediately.

Ms. Truman testified that it was difficult to get prompt estimates for the repairs, and Donna Beausoleil testified that it was difficult to get the Owner's payment for the repairs because the Owners were stationed overseas. Ms. Beausoleil testified that the owners of the Property are now seeking to

sell the Property.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1. The Commission finds that the Tenant entered into a one-year lease for the Property commencing on September 1, 2007. Exhibit 4. The Commission finds that the tenancy converted to a month-to-month tenancy by operation of law on September 1, 2008.

2. The Commission finds that the Tenant paid a security deposit of \$5,200.00 on or about August 14, 2007. Exhibit 4.

3. The Commission finds that the Tenant vacated the Property on October 30, 2010, and that the Tenant's tenancy terminated on October 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's tenancy terminated on October 31, 2010, the Landlord was required to make any necessary repairs to the Property, return the remainder of their security deposit, and provide the Tenant with an explanation of any withholdings by December 15, 2010. The Commission finds that the Landlord failed to repair the blinds, refinish the upper room floor, repair the window screens, and repair the window sills prior to sending its letter describing the damages to the Tenant or within 45 days of the end of the Tenant's tenancy. Therefore, the Landlord did not actually incur the costs within 45 days of the end of the tenancy, and the Landlord's letter did not describe "costs actually incurred." Accordingly, the Commission finds that the Landlord forfeited its right to withhold the cost of those repairs from the Tenant's security deposit. The Commission finds that the Landlord properly withheld \$45.00 for the cost of unclogging the laundry room sink, as that cost was

incurred on November 4, 2010. The Commission further finds that the Landlord properly withheld the late fees, bad check fees, and court costs set forth in its letter of November 26, 2010, as those costs were incurred before the Landlord notified the Tenant of the damages, and the Tenant did not refute the Landlord's allegations regarding the fees and costs. Exhibit 3.

The Commission notes that section 8-203 provides landlords with a valuable benefit—the ability to recover damages from a tenant for damages arising during a tenancy without the need to file a suit in court. However, to enjoy that benefit, landlords must strictly adhere to the procedural requirements of 8-203, which are intended to prevent landlords from taking advantage of tenants. The facts of this case demonstrate the importance of having repairs performed, and costs incurred before a landlord can withhold a tenant's security deposit. For example, the Landlord, on November 26, 2010, indicated that it had withheld \$1,000.00 from the Tenant's security deposit to refinish the floor in the upper room, which the Landlord described as "half the cost" of the repair. However, the only documentation the Landlord submitted regarding the cost of repairing the floors was the December 9, 2010, estimate from Brazilian Floors, LLC, for \$1,857.50, which included several items that appear to be unrelated to the damage alleged to have been caused by the Tenant, and the December 4, 2010, Job Proposal from Altru Real Estate Renovators, LLC, a contracting company owned by the property manager's husband, that appears to indicate that it would perform all of the work described in the Brazilian Floors estimate for \$1,000.00. Accordingly, it appears that the Landlord's assertion that the Tenant owed \$1,000.00 for the repair of the floors was nothing more than a guess as to the cost of the repair. The Commission notes that the fact that the owner is preparing the Property for sale, which typically involves cosmetic refurbishing beyond that performed by landlords between tenants, increases the risk that a tenant's security deposit will be used for reasons unrelated to damages caused by the tenant, and underscores the importance of completing the repairs before charging the tenant. The Commission notes that the

Tenant's assertion that the Landlord was required to provide her with receipts for the repair work along with the written list of damages is incorrect. However, it may be in a landlord's best interest to do so, so as to avoid a dispute with the tenant regarding any withholding from their security deposit.

The Commission understands the difficulty that Exit Realty may have had in obtaining the Owner's authorization to complete the repairs because the owners were stationed overseas. However, that fact does not excuse them from adherence to section 8-203. The Commission suggests that, in the future, they make arrangements with owners stationed overseas to facilitate the prompt repair of damages caused by tenants.

5. The Commission finds that the Tenant's \$5,200.00 security deposit accrued simple interest at the statutory rate of 3% per annum, accrued at six month intervals, from August 14, 2007, through November 26, 2010, when the Landlord returned \$3,436.50 to the Tenant. This period includes six six-month periods, with interest of \$78.00 accruing for each six-month period, amounting to a total of \$468.00 interest due through November 26, 2010. Therefore, the Commission finds that the Landlord should have refunded to the Tenant \$4,922.50, and that the Tenant is entitled to a further refund of her security deposit in the amount of \$1,486.00.

6. The Commission finds that punitive damages are not warranted in this case because there is no evidence that the Landlord intentionally violated the security deposit law or sought to defraud the Tenant.

V. ORDER.

Upon consideration of the complaint, exhibits, and any evidence presented at the hearing in this case, it is this ____ day of March 2011, by the City of Takoma Park Commission on Landlord-Tenant Affairs:

ORDERED, that the Landlord shall pay to the Tenant \$1,486.00 as a refund of the Tenant's

security deposit plus accrued interest; 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 Tenant 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*.

Jarrett Smith, Presiding Commissioner

Catherine Wakelyn, Commissioner

Christopher King, 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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