Verelett P. Allen Barbara Parrish Tenants v. Hillwood Manor Apartments Joint Venture, LLP and its agent, CSB Associates Management Corporation Landlord	)	Case No. 2011-02T

ORDER

I. INTRODUCTION.

On March 14, 2011, Verelett Allen and Barbara Parrish ("Tenants"), the tenants of 1100 Linden Avenue, Takoma Park, Maryland ("Property"), Apartment 103 ("Apartment"), filed a Complaint with the City of Takoma Park, Commission on Landlord-Tenant Affairs ("Commission") against Hillwood Manor Joint Venture, LLP, the owner of the Property, and its agent, CSB Associates Management Corporation (collectively, "Landlord"). Exhibit 3. The Tenants' Complaint alleged that the Landlord improperly entered their Apartment and failed to provide them with a report of entry on February 14 and February 28, 2011, in violation of the *Takoma Park Code*. The Tenants requested that the Commission require the Landlord to provide proper notice of entry and to "fine" the Landlord, which the Commission shall treat as a request for punitive damages. Exhibit 3. The Landlord filed a response to the Complaint on April 7,

2011. Exhibit 5. The Landlord asserted that it provided the Tenants with proper notice of each entry into their Apartment.

The Commission has jurisdiction over these matters 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 May 24, 2011. The Tenants appeared at the hearing. John Spalding and Crystal Longshore appeared on behalf of the Landlord. The Tenants, as the parties filing the Complaint, have the burden of proof by a preponderance of the evidence. § 6.24.080(J).

II. APPLICABLE LAW.

Section 6.16.140 of the *Takoma Park Code*, which governs landlords' entry into tenants' apartments provides, in pertinent part, as follows:

A. Routine Entry and Entry for City Property Maintenance Code Inspections.

1. 48 Hours' Written Notice Required.

a. Except as provided in subsection (A)(2), below, the landlord must provide the tenant with at least 48 hours' written notification of the intent of the landlord or authorized person to enter the rental unit.

b. The notice shall contain the date, approximate time frame, and purpose of the intended entry, and the telephone number, address, and e-mail address, if available, of the landlord or managing agent.

c. The affirmative consent of the tenant is not required when the landlord has provided 48 hours' written notice, but the landlord shall not enter the rental unit if the tenant contacts the landlord and objects to the entry. The tenant shall not unreasonably withhold consent to entry.

B. Types of Entry.

1. Emergency Entry. In the case of an emergency, the landlord or other person

authorized by the landlord has a right to enter the rental unit without giving prior notice of intent to enter. The landlord shall make a reasonable effort to contact the tenant regarding the emergency and of the intent to enter the rental unit to address the emergency.

2. Routine Entry. In cases other than emergencies, the landlord shall only enter the rental unit to inspect the premises, to perform routine maintenance, to make necessary or agreed upon repairs, decorations, alterations or improvements, supply necessary or agreed upon services, or to show the rental unit to prospective or actual purchasers, tenants, mortgagees, real estate agents, workers or contractors.

3. Entry for City Property Maintenance Code Inspections. The City shall have the right to conduct property maintenance inspections in accordance with the Property Maintenance Code.

C. Report of Entry. If the tenant is not present at the time of entry into the rental unit, the landlord shall leave a written report in plain view in the rental unit. Such report shall contain the following information:

1. The names of all individuals who entered the premises;

2. The date and time of such entry;

3. The reason for entry and work performed, if any;

4. The time of departure;

5. The address and telephone number of the landlord.

In addition to COLTA's general authority to remedy landlord-tenant violations, under section 6.24.090, upon finding a violation of section 6.16.140, COLTA can require the landlord to pay punitive damages to the tenant of up to $400.00 per incident of improper entry and each incident of failure to leave a report of entry. In deciding whether to award punitive damages, COLTA must consider "whether the violation was intentional and the impact upon the tenant." § 6.24.090. Improper entry complaints must be filed within one year of the date of the occurrence. § 6.24.060(C).

III. HEARING AND EVIDENTIARY SUMMARY.

Verelett Allen entered into a thirteen-month lease for the Apartment commencing on September 1, 2007. Exhibit 4. Barbara Parrish later moved in with Ms. Allen, and they testified that Ms. Parrish was added to the lease in a written addendum signed by a former employee of the Landlord, Crystal Phillips, although they did not have a copy. John Spalding testified that the Landlord does not have a copy of the addendum.

Crystal Longshore works in the on-site office at the Hillwood Manor Apartments, which is located on the bottom floor of 1100 Linden Avenue. Ms. Longshore recently replaced Crystal Phillips, a longtime employee of the Landlord. John Spalding, CSB Associates Management Corporation's Head Property Manager, is employed off-site.

The Tenants alleged that they arrived home on February 14, 2011, and discovered that someone had entered their Apartment because the top lock of their door was unlocked. Ms. Allen testified that she called Crystal Longshore following the February 14 incident and that Ms. Longshore said that she had been in the Apartment for an inspection. The Tenants alleged that on February 28, 2011, they again discovered that someone had entered their Apartment because the top lock was unlocked when they returned home and because someone had pulled back their shower curtain. They testified that there was no notice of entry provided prior to either incident and that there was no report of entry left in their Apartment following either incident.

In its written response to the Complaint, the Landlord asserted that it gave the Tenants timely written notice of each entry. Exhibit 5. The Landlord submitted an undated notice directed to "Residents of Hillwood Manor Apartments" stating that it would be performing semiannual inspections "[d]uring the week of Feb 14-18 2011," and a notice dated February 22,

2011, stating that a painter would be in the Tenants' Apartment on "2/24-2-28" to "Repair Bathroom Walls (Per Inspection)." Exhibit 5. Each notice submitted by the Landlord had "1100 #3" handwritten at the top. The Landlord stated that it asked the Tenants to list any necessary repairs and that, although the Tenants did not list any necessary repairs, during the February 14 inspection, it discovered that the Tenants' bathroom walls and refrigerator required repair. Exhibit 5.

The Tenants denied receiving the notices that were attached to the Landlord's response. The Tenants also denied that the broken refrigerator was discovered as a result of an inspection. Ms. Parrish testified that they had called the Landlord's emergency line because their refrigerator stopped working one weekend and the Landlord's handyman gave them a key to a vacant unit so they could use the refrigerator and then replaced their refrigerator two days later. Ms. Allen denied that the bathroom walls required painting or other repairs. Ms. Parrish testified that she was confident that no paint work was done in the bathroom on February 28, 2011, because there was nothing wrong with the bathroom walls to begin with and because the walls were covered with decorations and none of the decorations had been moved.

Ms. Longshore testified that the notice regarding the February 14-18 inspection related to the Landlord's own inspection of the Property, not a county or HUD inspection. She said that she gave the notice to all of the 96 units in the Property and that she gave a five day range to allow her time to inspect 96 units. She said that she put the notices under the apartment doors or, if they would not fit under the door to a unit, in the side of the door. She did not testify as to how she delivered the notice to the Tenants' Apartment. She also did not address the delivery of the February 22 notice during her testimony. The Landlord did not refute the Tenants' allegation

that they did not receive reports of entry following the February 14 and February 28 entry incidents.

The Tenants submitted with their Complaint a copy of a notice from the Landlord dated February 24, 2011, that stated, "We will be doing our semi-inspections with hud [sic] will [sic] visit each apartment starting March 01, 2011 at 9:00 am." Exhibit 3. The notice did not include their Apartment Number.

Ms. Allen testified that she never had a problem with the Landlord's staff entering her apartment without proper notice until the February 2011 incidents. She testified that Crystal Phillips, Ms. Longshore's predecessor, gave her verbal and written notice when someone would be entering her Apartment. Ms. Allen testified that the Landlord's entry into her unit was related to a series of events that transpired between her and the Landlord and Ms. Longshore. Ms. Allen testified that she was a party to a rent complaint against the Landlord in which the Commission issued a decision in December 2010,[1] and that she began to have problems with management shortly thereafter. Ms. Allen testified that Ms. Longshore began leaving the front door to 1100 Linden Avenue unlocked during the day so that she would not have to walk up the steps from the rental office in the basement to the entrance on the first floor when prospective tenants came to the office. Ms. Allen testified that, as a result of Ms. Longshore's practice of leaving the door unlocked, when she returned home after a New Year's vacation she found "thugs" hanging around in the hallway outside her Apartment, which made her feel unsafe. She testified that she complained about the practice of leaving the door unlocked to Ms. Longshore. She testified that

[1] The Commission takes notice of the fact that Ms. Allen was a party to COLTA Case No. 2010-10T, and was awarded damages for the Landlords' collection of an illegal rent in an Order dated December 3, 2010.

Mr. Spalding then called her and cursed at her, said that she did not rent the hallway and that she should "get out."

Ms. Longshore testified that on January 5, Ms. Allen came to her office and began yelling at her in front of prospective tenants. She testified that the next day, Ms. Allen followed her to her car when she was leaving work, and that on January 7, Ms. Allen yelled at her about keeping the door locked while she was talking to a prospective tenant. Ms. Allen denied following Ms. Longshore to her car, but admitted that after Ms. Longshore left the door open as she was leaving for the day, she yelled through the open front door at Ms. Longshore. The essence of Ms. Allen's message to Ms. Longshore, which included a derogatory epithet, was that she had crossed the wrong person.

Ms. Allen testified that she attempted to pay a reduced rent for January 2011 based upon the legal rent for her Apartment as found by the Commission in Case No. 2010-10T, but that Ms. Longshore refused to accept the rent payment and that the Landlord then sued her for failure to pay rent.

Following the verbal altercation between Ms. Longshore and Ms. Allen on January 5, 2011, Mr. Spalding had Ms. Longshore issue a sixty-day notice to vacate to protect Ms. Longshore from Ms. Allen. Ms. Allen testified that she never touched or threatened to harm Ms. Longshore. She testified that her comments to Ms. Longshore were intended to convey that she would take legal action to protect her rights and that she followed through by filing a COLTA complaint the next day, and that the judge refused to issue a Protective Order against her when she went to court to oppose the Protective Order.

The Commission takes administrative notice that Ms. Longshore filed an action for a

Protective Order in District Court on January 7, 2011, and that the court denied the petition on January 14, 2011.

John Spalding testified that Ms. Allen's illegal rent complaint was irrelevant to this matter because it is unresolved and the Landlord is in bankruptcy. He denied that he had cursed at Ms. Allen over the phone and alleged that she had cursed at him when she called him to complain about the unlocked front door and that he simply hung up the phone. He testified that the notice to vacate was issued to protect Ms. Longshore from violence. He testified that the front door to 1100 Linden Avenue has been left unlocked during business hours for the last twenty years.

Ms. Allen testified that the Landlord had the lock removed from the front door to 1100 Linden Avenue and that she filed a COLTA complaint about the removal of the lock. Ms. Longshore testified that she had the lock removed because Ms. Allen kept locking the door during business hours.

Ms. Allen testified that she and the Landlord agreed that she would drop her COLTA complaint about the locks in exchange for the Landlord's dropping of its suit for rent and its promise to replace the lock on the front door. She testified that the Landlord did not replace the lock until three days before she moved out, when she threatened to refile her COLTA complaint about the lock.

The Tenants asserted that they believed the entries into their Apartment on February 14 and 28, 2011, were intended to harass them, and that they decided to move out rather than continue to deal with the harassment. Exhibit 3. The Tenants had already vacated the Apartment at the time of the hearing.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1. The Commission finds that Verelett Allen had a thirteen-month tenancy commencing on September 1, 2007, and that it converted to a month-to-month tenancy by operation of law on October 1, 2008. The Commission finds, based on the Tenants' testimony that Barbara Parrish was a cotenant of Ms. Allen.

2. The Commission finds the Landlord violated section 6.16.140 in four instances–twice each on February 14 and February 28, 2011, by failing to provide proper notice before entering the Tenants' Apartment on those dates and failing to leave a report of entry following each entry. Regarding the improper notice of entry, there is no evidence that either entry constituted an emergency entry or that the Tenants authorized the Landlord to enter their Apartment on those dates. Accordingly, 48 hours' written notice was required. The Commission finds the Tenants' assertions that they did not receive any notice prior to the Landlords' entry on those dates to be credible and does not find the Landlord's assertions that it provided the notice to be credible.[2]

The fact that the Landlord, in its written Response to the Complaint, claims to have discovered that the Tenants' refrigerator was broken during the purported February 14 inspection causes us to doubt the veracity of the Response. First, it seems extremely unlikely that an inspection would reveal a defective refrigerator before the Tenants would notice that their

[2] The Commission notes that the purported notices of entry submitted by the Landlord are deficient in several respects. Section 6.16.140(A)(1)(b) requires that the notice contain "the date, approximate time frame, and purpose of the intended entry, and the telephone number, address, and e-mail address, if available, of the landlord or managing agent." The Landlord's purported practice of providing the Tenants with a five-day window of time when it will be entering their apartment, Exhibit 5, is not satisfactory. The purported notice regarding the February 14 inspection does not include the Landlord's phone number, address, or email address.

refrigerator was not working. Second, the Landlord claims to have sent the painter to address the bathroom walls on February 28, but does not mention repairing or replacing the broken refrigerator. In contrast, the Tenants' explanation that they advised the Landlord that their refrigerator was broken and then the Landlord's maintenance man replaced it is logical and believable.

Regarding the Landlord's failure to provide a report of entry, the Commission finds the Tenants' unrefuted assertions that they did not receive reports of entry to be credible.

3. Regarding the Tenants' request for punitive damages, the Commission has considered whether the violations were intentional and the impact upon the Tenants and has decided to award the Tenants the maximum punitive damages of $400.00 for each of the four violations. The Commission finds that the timing of the incidents of improper entry shortly after several disputes between the Tenants and the Landlord and its employees corroborate the Tenants' assertion that the Landlord's entry violations were intended to harass them. Those disputes include the following: (1) the entry of an Order finding that the Landlord was charging the Tenants an illegal rent in December 2010, (2) the Tenants' attempt to pay a reduced rent in January 2011, (3) Ms. Longshore's refusal to accept Ms. Allen's reduced rental payment, (4) the Landlord's filing of a lawsuit against Ms. Allen, (5) the telephone altercation between Ms. Allen and Mr. Spalding regarding the locking of the front door at 1100 Linden Avenue during which one or both of them cursed at the other, (6) the verbal altercations between Ms. Allen and Ms. Longshore during which Ms. Allen cursed at Ms. Longshore, (7) Ms. Longshore's seeking of a protective order against Ms. Allen, (8) Ms. Allen's COLTA complaint regarding the lock on the front door of 1100 Linden Avenue, and (9) the Landlord's issuance of a notice to vacate to the

Tenants.

The Commission finds that the Landlord's violation of section 6.16.140 had a severe impact upon the Tenants' sense of security, as evidenced by the fact that the Tenants gave the Landlord notice of their intent to vacate their Apartment four days after the second incident. Compliance with the entry notice and reporting requirements of section 6.16.140 is important to provide all tenants with a sense of security in light of the fact that landlords are required by law to hold a key to their units. However, the impact of disregarding the Tenants' right to privacy and security is particularly great in this case because of the ongoing and escalating disputes between the Tenants and the Landlord and its employees, including Ms. Longshore who works in the Tenants' building.[3]

V. ORDER.

Accordingly, it is this 15th day of June 2011, by the City of Takoma Park Commission on Landlord-Tenant Affairs, ORDERED that the relief requested by the Tenant is GRANTED; and

ORDERED, that the Landlord shall pay to the Tenants, Verelett Allen and Barbara Parrish, $1,600.00[4] as punitive damages for its failure to provide proper notice prior to entering their Apartment on February 14, 2011, and February 28, 20ll, and failing to provide the Tenants

[3]The Commission does not condone Ms. Allen's conduct or language, but Ms. Allen's behavior does not excuse the violation of her rights under section 6.14.140.

[4] The Commission notes that the Owner of the Property currently has a bankruptcy petition pending in the U.S. Bankruptcy Court for the District of Maryland. Accordingly, the Tenants should consult with an attorney before attempting to collect this award.

with a report of entry following its entry into their Apartment on February 14, 2011, and February 28, 2011; and

ORDERED, that the Landlord shall comply with the requirements of section 6.16.140 of the *Takoma Park Code* and provide its tenants with proper notice of intent to enter their units and with a proper report following entry by its agents into their units.

_____
Jarrett K. Smith, Presiding Commissioner

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Catherine Wakelyn, Commissioner

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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 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.

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