

Treverne Brown-Thomas)	
)	
Tenant)	
)	
v.)	Case No. 2011-03T
)	
Deauville Associates, LLP, and its agent,)	
Vista Management Company)	
)	
Landlord)	
_____)	

ORDER

I. INTRODUCTION.

On April 26, 2011, Treverne Brown-Thomas (“Tenant”), the tenant of 7520 Maple Avenue, Takoma Park, Maryland (“Property”), #508 (“Apartment”), filed a Complaint with the City of Takoma Park, Commission on Landlord-Tenant Affairs (“Commission”) against Deauville Associates, LLP, the owner of the Property, and its agent, Vista Management Company (collectively, “Landlord”). Exhibit 3. The Tenant’s Complaint alleged that the Landlord’s agents entered her Apartment without providing proper notice on February 28, 2011, and without providing proper notice and without providing her with a report of entry on March 9, 2011, in violation of section 6.16.140 of the *Takoma Park Code*. The Tenant requested that the Commission require the Landlord to reimburse her for items stolen from her Apartment during a burglary, reimburse her for the cost of moving out of the Property, and pay her punitive

damages for the improper entry incidents.¹ The Landlord filed a response to the Complaint on May 5, 2011. Exhibit 5.

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 July 19, 2011. The Tenant appeared at the hearing. Victoria Sutton and Steve Cohn of Vista Management appeared on behalf of the Landlord. The Tenant, as the party filing the Complaint, has 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 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

¹ The Tenant, in her Complaint, had also asked that the Landlord be required to reimburse her for her April 2011 rent and return her security deposit. At the hearing, the Tenant stated that she was no longer seeking reimbursement of her April rent and that the Landlord had already returned her security deposit.

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.

2. Entry with less than 48 Hours' Notice Permitted with the Written Consent of the Tenant.

a. The landlord or authorized person may enter the rental unit at any time after providing the tenant with written notice containing the information required in subsection (A)(1)(b), above, and obtaining the written consent of the tenant.

b. When the landlord has provided the tenant with less than 48 hours' written notice of intent to enter the rental unit, the tenant's refusal to consent to entry shall be reasonable as a matter of law.

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.

The Tenant entered into a one-year lease for the Apartment commencing on August 1, 2011. Exhibit 4.

The Tenant alleged that when she arrived home at her Apartment on February 28, 2011, she found a maintenance report from the Landlord indicating that someone had entered her Apartment to repair her door. The Tenant alleged that she did not receive prior notice that the Landlord would be entering her Apartment to repair her front door. The Tenant asserted that when she arrived home on the evening of March 9, 2011, she found her shower curtain pulled back and a bottle of shampoo standing on her bathroom floor and realized that someone had been in her Apartment. She did not receive prior notice that the Landlord would be entering her Apartment that day, and the Landlord did not leave a report of entry. She emailed the Landlord's Property Manager, Victoria Sutton, the following day to inquire whether a

maintenance person may have entered her Apartment, stating, “As you can imagine, I was a little spooked.” Ms. Sutton replied that a repairman had entered her unit by accident because she gave him the wrong unit number in connection with a service request for another unit.

On April 4, 2011, upon returning home from work, the Tenant discovered that her Apartment had been burglarized. The Tenant reported that her laptop computer, digital camera, and two bags of coins were stolen from her Apartment. She testified that she is certain that she locked the lock on her doorknob, but not the deadbolt on the front door of her Apartment that day. The Police Report for the incident states that there was no sign of forced entry.

The Tenant testified that her friend, Gail Gomez, had her spare key and that she trusted Ms. Gomez and that Ms. Gomez was out of town on April 1. Ms. Gomez corroborated this testimony.

The Tenant asserted in her Complaint that the Landlord was responsible for the burglary because of the alleged incidents of improper entry and failure to report entry on February 28, 2011, and March 9, 2011, because there was no forced entry, and because there was a newsletter from the Landlord on her door on the day of the burglary.

Victoria Sutton testified that the Landlord has an electronic key tracking system for the Property that identifies when and by whom the key to each unit is checked out for maintenance purposes. She testified that the key to the Tenant’s unit was not checked out on April 1, and submitted a printout of the key tracking record. Exhibit 5.

Regarding the February 28, 2011, entry into the Tenant’s Apartment, Ms. Sutton testified that she discovered, during a routine inspection on February 24, that the Tenant’s front door did not close automatically as required by the Property Maintenance Code and then sent a

maintenance man to repair the door on February 28. Ms. Sutton conceded that no prior notice of entry was provided to the Tenant regarding repair of the door. Steve Cohn, another representative of the Landlord, argued that it was more important to repair the door as soon as possible than to provide the Tenant with prior written notice.

Regarding the March 9, 2011, entry into the Tenant's Apartment, Ms. Sutton testified that the repairman had to deal with an emergency that day, and returned the key to her in her office on the evening of March 9, where she kept it locked up, but that it was not checked into the key tracking system until the next day. At the hearing, Ms. Sutton conceded that there was no prior notice given regarding the erroneous entry and that no report of entry was provided to the Tenant. The Tenant asserted that the fact that the Landlord allowed her front door to go unrepaired for four days demonstrated that the Landlord was negligent about security. The Tenant also noted that the key tracking report submitted by the Landlord indicated that her key was checked out for extended periods of time, including remaining checked out overnight following the March 9 entry into her Apartment, which she argued further demonstrated the Landlord's negligence regarding security.

Ms. Gomez testified that she has lived in the Property for many years and feels very safe there. She testified that she trusts the maintenance staff. She also testified that she occasionally has worked in the office at the Property and that she has witnessed Ms. Sutton keep careful track of the residents' keys, including staying in the office late in the evening until all the keys are returned.

Mr. Cohn testified that the Tenant was negligent in failing to lock the deadbolt because, without the deadbolt locked, the door to her Apartment could be opened with a credit card.

The Tenant testified that the entry violations by the Landlord made her feel very insecure, particularly because she lives alone. Following the burglary, the Tenant stayed with friends and family, or had them stay with her at her Apartment because she felt unsafe there. The Tenant decided to move out of the Apartment following the April 1 burglary. She vacated the Apartment on April 28, 2011 and returned her key to the Landlord on April 29, 2011.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1. The Commission finds that the Tenant had a one-year tenancy commencing on August 1, 2010

2. The Commission finds the Landlord violated section 6.16.140 in three instances—twice each on February 28, 2011, when its maintenance person entered the Tenant’s Apartment to repair her front door without providing prior written notice, and twice on March 9, 2011, by failing to provide written notice before entering the Tenant’s Apartment on that date and failing to leave a report of entry following the entry. Regarding the improper notices of entry, there is no evidence that either entry constituted an emergency entry or that the Tenant authorized the Landlord to enter her Apartment on those dates. Accordingly, 48 hours’ written notice was required.

3. Regarding the Tenant’s request for punitive damages, the Commission has considered whether the violations were intentional and the impact upon the Tenant and has decided to award the Tenant punitive damages of \$100.00 per violation for the three violations. The Commission finds that none of the violations were intentional. However, the Commission finds that the three violations, particularly when considered together, significantly impacted the

Tenant's feeling of security, as evidenced by her testimony and by her letters and emails to the Landlord regarding the incidents. Regarding the February 28 entry, the Commission gives no credence to Mr. Cohn's argument that it is preferable to make prompt repairs than to provide tenants with proper notice of entry. Section 6.16.140 embodies the City Council's determination that providing 48 hours' prior written notice, thereby protecting tenants' privacy and security, is more desirable than providing immediate repairs. Moreover, the Council provided landlords with the means to enter into a tenant's unit without first providing 48 hours' written notice by allowing landlords to enter into a tenant's unit immediately upon obtaining the tenant's written consent. Regarding the March 9, 2011, entry, although the Commission understands that the Landlord's entry into the Tenant's Apartment was accidental, the Landlord must be very careful not to make such mistakes. Once the entry was made, the Landlord's failure to provide the Tenant with a report of the entry compounded the negative impact upon the Tenant, who arrived home late in the evening to discover that someone had been in her shower with absolutely no explanation and no means of obtaining one from the Landlord until the following day.

Nonetheless, the Commission finds that the burglary of the Tenant's Apartment on April 1, 2011, had an even greater impact upon the Tenant than the Landlord's entry violations and that it was the burglary that led her to vacate her unit, as evidenced by the fact that she was unable to sleep alone in the Apartment and decided to move out of the Apartment only after the burglary. Accordingly, the Commission does not believe it appropriate to award greater punitive damages, and the Commission declines to require the Landlord to pay the Tenant's moving expenses.

4. The Commission finds that the Tenant failed to prove that the Landlord was responsible

for the burglary of her Apartment. The Commission notes that the key tracking report submitted by the Landlord indicates that the key to the Tenant's Apartment was not checked out during the burglary. In addition, the record demonstrates that the Landlord is conscientious about keeping track of the keys for the units in the Property. Specifically, the Commission notes that most landlords in the City do not have an electronic key tracking system. In addition, the Tenant's own witness testified that Ms. Sutton is very careful about taking care of the keys to tenants' units. Finally, the Commission notes that the Tenant's own witness also testified to the trustworthiness of the maintenance staff at the Property. Accordingly, the Commission finds no evidence indicating that the Landlord was responsible for the burglary of the Tenant's Apartment and declines to require the Landlord to reimburse the Tenant for the items stolen from her Apartment.

V. ORDER.

Accordingly, it is this 2nd day of August 2011, by the City of Takoma Park Commission on Landlord-Tenant Affairs, ORDERED that the relief requested by the Tenant is GRANTED IN PART and DENIED IN PART; and

ORDERED, that the Landlord shall pay to the Tenant, Treverne Brown-Thomas, \$300.00 as punitive damages for its failure to provide proper notice prior to entering her Apartment on February 28, 2011, and March 9, 2011, and failing to provide the Tenant with a report of entry following its entry into her Apartment on March 9, 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.

Catherine Wakelyn, Presiding Commissioner

Christopher King, 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.