

CITY OF TAKOMA PARK  
COMMISSION ON LANDLORD-TENANT AFFAIRS

Thomas C. Radman  
6903 Woodland Ave.  
Takoma Park, MD 20912

Tenant

v.

Marcelle DuPraw  
Leah Allen  
PO Box 5780  
Takoma Park, MD 20912

Landlord

COLTA Case No. 11-08T

**OPINION AND ORDER**

**I. INTRODUCTION.**

On September 29, 2011, Thomas Radman (“Tenant”), the former tenant of the single-family home located at 428 Ethan Allen Avenue, Takoma Park, Maryland (“Property”), filed a Complaint with the City of Takoma Park Commission on Landlord-Tenant Affairs (“COLTA” or “Commission”) against Marcelle DuPraw, the owner of the Property, and Leah Allen, Ms. DuPraw’s managing agent (collectively, “Landlord”). This Complaint was docketed as COLTA Case No. 11-08T.

The Tenant’s Complaint alleged that the Landlord improperly failed to return a portion of

his security deposit because he was not responsible for the alleged damages that the Landlord withheld from his deposit and that the Landlord failed to provide a proper receipt for his security deposit. The Tenant sought the return of the remainder of his security deposit plus interest and punitive damages and \$25.00 for the Landlord's failure to provide a receipt.

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 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. Ms. DuPraw and Ms. Allen, 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).

Landlords must provide tenants with written receipt for their security deposit, which may be included in a written lease. *Md. Code Ann.*, Real Prop. Art., §8-203(c). The receipt must notify tenants of their rights with respect to the security deposit as set forth in section 8-203. *Md. Code*

*Ann.*, Real Prop. Art., §8-203.1.

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

The Tenant entered into a lease for the Property commencing on August 1, 2010, and terminating on July 31, 2011, and paid a security deposit of \$4,580.00, \$2,290.00 of which the Tenant used as his last month's rent. Exhibit 4.

In an email dated May 9, 2011, the Tenant advised the Landlord that he intended to vacate the Property on August 1, 2011. In an email dated May 9, 2011, the Landlord advised the Tenant that the lease ended July 31, 2011, and that he would have to be out of the Property by then. Exhibit 3. The Landlord also advised the Tenant that it would do a walkthrough after he had removed his possessions and returned his keys. Exhibit 3. In an email dated May 10, 2011, the Tenant notified the Landlord that he intended to vacate the Property on July 30, 2011, and would be ready for a walkthrough on July 31, 2011. Exhibit 3. The Tenant vacated the Property on July 30, 2011, in accordance with his notice. Exhibit 3.

In a letter dated September 14, 2011, the Landlord returned \$1,842.70 to the Tenant and provided the following accounting of the Tenant's security deposit:

Security Deposit	\$2,290.00
Interest (3%)	<u>\$68.70</u>
	\$2,358.70
Less Damages	<u>-\$516.00</u>
Returned Security Deposit	\$1,842.70

Exhibit 5.

The Landlord enclosed a list of damages with the September 14 letter. Exhibit 5. The Landlord

withheld \$165.00 for housecleaning, \$235.00 for handyman services by Jose Cruz, including replacing a broken mirror, repairing holes in a wall, replacing a metal blind, removing putty from windows and doors, replacing two halogen bulbs, and painting over crayon marks, \$72.50 for replacing a light fixture, and \$44.00 for weeding and cleaning the yard. The Landlord included two additional charges on the itemized list of damages, \$79.00 to replace a refrigerator shelf, and \$48.00 to rekey a lock because the Tenant did not return a second set of keys, but did not deduct that amount from the Tenant's security deposit. The Landlord submitted invoices for the cleaning and Mr. Cruz's handyman services. The Landlord provided an invoice from Jerome Young's Electrical for \$315.00 that included the replacement of the light fixture and a repair to the HVAC system. Exhibit 5.

The Tenant argued that the Landlord fraudulently deducted maintenance items with a cost of more than \$50.00 from his security deposit without providing him with 10 days' advance notice, citing paragraph 8 of his lease. Paragraph 8 of the lease required the Tenant to perform general maintenance, and, if the Tenant failed to fulfill his maintenance responsibilities, permitted the Landlord to perform the maintenance and charge the Tenant up to \$50.00 per maintenance item after providing the Tenant with ten days' written notice of the need for the maintenance. Exhibit 5. The Tenant also alleged that the Landlord failed to notify him of his rights under section 8-203.1 of the Real Property Article of the *Maryland Code*. The Tenant's lease acknowledged receipt of the Tenant's security deposit and provided the Tenant with the notice required by section 8-203.1. Exhibit 4.

#### Housecleaning

The Tenant argued that the Landlord improperly charged him for cleaning the Property because he left it "broom-clean" as required by his lease. He argued that the requirement that he

leave the Property “broom-clean” meant that he was only required to sweep the floor when he moved out.

Paragraph 25 of the lease, entitled Move-Out Inspection/Surrender of Premises, required the Tenant to “surrender the premises and all personal property of Landlord therein in good and clean condition,” and that the Tenant leave the premises in “broom-clean condition, free of trash and debris.” In addition, Paragraph 8 of the lease, entitled Maintenance, required the Tenant to maintain the Property “in a clean sanitary, and safe condition,” including the cleaning of appliances. Exhibit 4. The Landlord submitted photographs of the Property that revealed dirty floors, a dirty toilet, a dirty cabinet, dirty bathroom tiles, and a dirty refrigerator. Exhibit 3.

#### Handyman Services of Jose Cruz

*Broken Mirror and Halogen Bulbs.* The Tenant asserted that the broken mirror cited by the Landlord was broken when he moved into the Property. The Landlord denied that the mirror was broken when the Tenant moved in. Similarly, the Tenant alleged that the missing halogen bulbs cited by the Landlord were missing at the commencement of his tenancy, whereas the Landlord asserted that the bulbs were present and working at the commencement of the tenancy. Paragraph 4(b) of the lease gave the Tenant the right to inspect the Property at the commencement of the lease for the purpose of preparing a list of existing damages. Exhibit 4. The Tenant did list the missing bulbs or broken mirror at the commencement of the tenancy. He asserted that he did not report the items at the commencement of his tenancy because he was intimidated by Ms. Allen, who, he claims, told him, “the last tenant I had complained a lot, and I do not want to rent to people like that again.” Exhibit 3.

*Repair of Holes in the Wall.* The Tenant testified that he made several dime-sized holes to bolt furniture to the wall. He asserted that he repaired the holes using joint compound and toilet

paper. He testified that he used the toilet paper to allow the joint compound to adhere to the wall. He testified that the wall where he repaired the hole was ready for sanding and painting. He testified that he did not paint over the holes because the lease prohibited him from painting. Ms. Allen testified that there was toilet paper sticking out of the holes in the wall and that the Tenant did not sand his repairs. Exhibit 4. Paragraph 13 of the lease prohibited the Tenant from “driving nails or other devices into the walls or woodwork (a reasonable number of picture hangers excepted).” Exhibit 4.

*Removal of Putty from Doors and Windows.* The Tenant asserted that he used weather sealing putty throughout the Property because the doors and windows were very drafty. In the Tenant’s May 9, 2011, email to the Landlord giving notice of his intent to vacate, the Tenant advised the Landlord that he had installed weatherstripping around the front and back doors and asked if the Landlord wanted him to remove it. Exhibit 3. The Landlord did not respond to the Tenant’s question about the putty.

*Priming and Painting Over Markings on Wall.* The Tenant asserted that he did not prime and paint over the markings made by his child because his lease prohibited him from painting. Paragraph 25(a) of the lease provided that the “Tenant will not paint marks, plaster holes, crevices, or cracks, or attempt any repairs of the premises without Landlord’s prior written consent.”

*Replacement of Blinds.* The Tenant admitted that he removed the Landlord’s metal blinds and left paper blinds, but he testified that the metal blinds were in poor condition.

### Replacement of Light Fixture

The Tenant concedes that he broke the globe for the ceiling light fixture in the small bedroom of the Property. The Tenant notified Ms. Allen that he broke the fixture and asked her if she wanted him to replace it or pay her for the value of the fixture if she wanted to upgrade the fixture in an email dated May 10, 2011. Ms. Allen responded by asking that he set aside the broken fixture so she could remember what it looked like, and the Tenant responded that he had thrown it away, but described it as “a square piece of frosted glass with flower decals.” The Landlord did not further respond to the Tenant about the light. The Landlord asserted that the Tenant, rather than replacing the broken fixture, attached a square, white, frosted cover to the old fixture, which was round and brass colored. Ms. Allen testified that she was unable to find a globe that matched the fixture and, therefore, purchased a new light and had an electrician install it. The Landlord asserted that she charged the tenant \$72.50 for replacing a light fixture, based on one half of the cost of the service call by the electrician, the labor for installing the light, and \$20.00 for the replacement fixture.

### Weeding and Cleaning the Yard

The Tenant argued that he was not responsible for maintaining the yard because the Landlord did not notify him that the maintenance was not adequate and allow him 10 days to perform the maintenance himself before charging him. He asserted that Ms. Allen called him three days before he moved out and asked if he wanted her to send her gardener over to take care of the yard so that it would look good for prospective tenants but that she did not indicate that he would have to pay for the gardener’s services. The Landlord asserted that the Tenant allowed the yard to become completely overgrown.

### Refrigerator Shelf

The Tenant asserted that the refrigerator was in the same condition at the beginning and end of his tenancy. The Landlord asserted that the Tenant did not report the refrigerator shelf as damaged when he moved in and alleged that the shelf was missing from the refrigerator when the Tenant moved out.

#### Rekeying of Lock

The Tenant conceded that he forgot to return one set of keys to the Landlord.

#### **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 August 1, 2010, and terminating on July 31, 2011.

2. The Commission finds that the Tenant paid a security deposit of \$4,580.00, \$2,290.00 of which the Tenant used as his last month's rent pursuant to the terms of the lease.

3. The Commission finds that the Tenant gave the Landlord written notice of his intent to vacate the Property on May 10, 2011, and that the Tenant vacated the Property on July 30, 2011.

4. The Commission finds that the Landlord complied with section 8-203.1 of the Real Property Article of the *Maryland Code*, as the written lease acknowledged the Landlord's receipt of the Tenant's security deposit and advised the Tenant of his rights with respect to the deposit and inspection of the premises. Exhibit 4.

5. The Commission finds that the Tenant's \$4,580.00 security deposit accrued simple interest at the statutory rate of 3% per annum, accrued at six-month intervals, from July 11, 2010, through September 14, 2011. This period includes two six-month periods, amounting to a total accrual of \$137.40 in interest. Although the lease permitted the Tenant to apply \$2,290.00 of his security deposit to his last months' rent, the entire amount of the deposit constituted a security



deposit as defined by section 8-201(a)(3) and, therefore, accrued interest at the statutory rate.

6. The Commission finds that the Landlord properly withheld \$165.00 for housecleaning services performed by Ash Maids, Inc., on August 11, 2011. The Commission finds, based on the testimony of the Landlord, the admissions of the Tenant, and the photographs submitted by the Landlord that the Tenant failed to leave the Property in a clean condition at the end of his tenancy. The Commission rejects the Tenant's argument that the lease required only that he sweep the house before moving out. First, Paragraph 25 of the lease, entitled "Move-Out Inspection/Surrender of Premises," required the Tenant to "surrender the premises and all personal property of Landlord therein in good and clean condition" *and* that the Tenant leave the premises in "broom-clean condition, free of trash and debris." Exhibit 4. Second, Paragraph 8 of the lease, entitled Maintenance, required the Tenant to maintain the Property "in a clean sanitary, and safe condition," including the cleaning of appliances. Exhibit 4. Accordingly, the Commission finds that the Tenant was required to leave the Property in clean condition and that the Tenant failed to do so.

7. The Commission finds that the Landlord properly withheld \$235.00 from the Tenant's security deposit for the repairs performed by Jose Cruz. The Commission rejects the Tenant's argument that the Landlord was required to notify him of necessary repairs before the Landlord could charge him for repairs. The section of the lease relied upon by the Tenant relates to the *Tenant's* ongoing maintenance responsibilities during the tenancy and authorized the Landlord to perform required maintenance and charge the Tenant for the maintenance if the Tenant failed to perform the maintenance following a written request by the Landlord. It does not require the Landlord to give the Tenant notice of the need to repair damages caused by the Tenant before the Landlord can deduct the damages from the Tenant's security deposit.

The Commission finds that the broken mirror and the missing light bulbs cited by the Landlord were not defects existing at the commencement of the Tenant's tenancy. The lease expressly notified the Tenant of his right to inspect the property at the commencement of his tenancy and create a list of existing defects and the Tenant did not do so. The Commission does not find the Tenant's testimony that he was too intimidated by the Landlord to report any defects to be credible.

The Commission finds that the Tenant failed properly to repair the holes that he made in the drywall to anchor his furniture based on the admissions of the Tenant and the testimony and photographs of the Landlord. The Landlord testified that toilet paper was visible sticking out of the holes after the Tenant made the repairs. The Tenant conceded that he did not complete the repair, claiming that the lease prohibited him from doing so. (The Commission notes that the lease also prohibited him from making the holes in the wall.)

The Commission finds that the Tenant was responsible for the cost of removing the weather sealing putty from the doors and windows in the Property. The Commission finds, based on the testimony of the Landlord, that the putty was left on the doors and windows of the Property and that the putty prevented the windows from opening and closing and was sloppily applied. The Commission rejects the Tenant's argument that his May 9, 2011, email to Ms. Allen noting that he had installed "weather-stripping . . . around the front and back doors" and asking her if she wanted him to remove it alleviated his responsibility for removing the Tenant's email did not accurately describe the condition of the Property.

The Commission rejects the Tenant's argument that he was not responsible for painting over the crayon and marker drawings on the wall because the lease prohibited him from painting. Paragraph 25(a) of the lease required the Tenant to obtain the Landlord's permission before

painting. The Commission notes that the Tenant admitted that his child drew all over the wall, and there is no evidence that the Tenant notified the Landlord of the markings on the wall or requested permission to paint over them.

The Commission finds that the Tenant is responsible for the cost of replacing the Landlord's metal blinds because the Tenant conceded that he removed them and did not replace them.

8. The Commission holds that the Landlord improperly withheld \$72.50 from the Tenant's security deposit for the replacement of the broken light fixture. The Commission finds that the Tenant notified Ms. Allen of the broken light fixture on May 11, 2011, and asked the Landlord if they wanted him to replace it or pay for it, and the only response from Ms. Allen was a request that he set aside the broken lamp. As a result, the Tenant installed a new glass cover over the fixture. In addition, the Landlord did not know the actual cost incurred to replace the light fixture, as the electrician that the Landlord hired performed work on the HVAC system as well as replacing the light and charged \$315.00 for both tasks, with no breakdown of the cost or separate charge for the service call. Exhibit 5. Accordingly, the Landlord did not even know the actual cost incurred for replacing the light and could not deduct the cost from the Tenant's security deposit.

9. The Commission holds that the Landlord improperly deducted \$44.00 from the Tenant's security deposit for weeding and cleaning the yard. The Landlord offered to have its gardener come and tend to the yard so as to have it ready for prospective tenants and did not advise the Tenant that he would be charged for the work. The Landlord is not entitled to deduct the cost of the work that she offered to provide for the Tenant from the Tenant's security deposit.

10. The Commission finds that the Landlord did not deduct the cost of replacing the refrigerator shelf or rekeying the locks for Property from the Tenant's security deposit. Accordingly, the Commission need not address these issues. However, the Commission notes that

section 6.16.050(I) requires landlords to rekey every rental unit between tenancies, so the cost of rekeying should not be deducted from tenants' security deposits or otherwise charged to tenants.

11. The Commission holds that the Landlord is not liable to the Tenant for punitive damages because the Landlord did not withhold any portion of the Tenant's security deposit without reasonable basis. Rather, the Commission finds that the Landlord mistakenly withheld a portion of the Tenant's security deposit for the replacement of the light fixture and weeding the yard based on a reasonable belief that it was entitled to withhold those costs from the deposit.

12. The Commission finds that the Landlord must refund an additional \$184.70 to the Tenant, which is based upon the following calculation:

Security Deposit	\$4,580.00
Interest	137.40
July 2011 Rent	(2,290.00)
Cleaning	(165.00)
Jose Cruz repairs	(235.00)
September 14, 2011, refund	<u>(1,842.70)</u>
Refund due Tenant	\$184.70

## **VI. ORDER.**

Upon consideration of the complaint, exhibits, and any evidence presented at the hearing in this case, it is this 21st day of December 2011, by the City of Takoma Park Commission on Landlord-Tenant Affairs:

ORDERED, that the Landlord shall pay to the Tenant \$184.70 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*.

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Christopher King, Presiding Commissioner

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Victoria Sutton, Commissioner

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H.D. Edwards, 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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