

Gladys S. Makoge)
1100 Linden Avenue, #1)
Takoma Park, MD 20912)
)
vs.)
)
Hillwood Manor Joint Venture, LLP)
P.O. Box 647)
Riverdale, MD 20738)
_____)

Case No. 2012-04T

ORDER

I. INTRODUCTION.

On June 4, 2012, Gladys Makoge (“Tenant”), the tenant of 1100 Linden Avenue, Takoma Park, Maryland (“Property”), Apartment 1 (“Apartment”), filed a Complaint with the City of Takoma Park, Commission on Landlord-Tenant Affairs (“Commission”) against Hillwood Manor Apartments Joint Venture, LLP, the owner of the Property (“Landlord”). Exhibit 2. The Tenant’s Complaint alleged that the Landlord caused a defective tenancy by failing to correct the following conditions in her Apartment: moldy carpeting resulting from a flood during a snowstorm, swollen and cracked walls caused by excessive heat from the boiler in the building, deterioration of the paint, an unglazed bathtub, and a running toilet. The Tenant also alleged that the Landlord issued a notice to vacate to her in retaliation for her complaint to the Housing Department about the condition of her Apartment, which resulted in a Code Enforcement inspection of her Apartment. The Tenant requested that the Landlord be required to rescind the notice to vacate, and to either place her in a different apartment or repair her Apartment. Exhibit

3. The Landlord filed an Answer to the Complaint asserting that it had corrected the alleged defective tenancy and that it had not retaliated against the Tenant as a matter of fact and law. The Landlord asked that the Commission dismiss the Complaint.

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 the Complaint on July 10, 2012. The Tenant and the Landlord's representatives appeared at the hearing. Thomas Sippel, Esq., represented 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.

The *Takoma Park Code* defines a defective tenancy as “any condition in a rental facility that constitutes a violation of the terms of the lease, the Landlord-Tenant Relations Law, or the Property Maintenance Code.”¹ § 6.04.030. A complaint of a defective tenancy may be filed with COLTA if a tenant has given the landlord written notice of the defect and the landlord has not rectified the defect or made good faith efforts to do so within one week after notice was given. § 6.16.170(A). When COLTA finds that a landlord has caused a defective tenancy, then COLTA is empowered to award the tenant his or her actual monetary damages sustained as a result of the defective tenancy and to require the landlord to correct the defect. § 6.24.090(B)(1).

¹ The City of Takoma Park has adopted Chapter 26, Housing and Building Maintenance Standards, of the *Montgomery County Code* as the City's Property Maintenance Code. See *Takoma Park Code* §6.12.020. The City contracts with the Montgomery County Department of Housing and Community Affairs to enforce the Property Maintenance Code and to perform rental licensing and complaint inspections for the City.

Section 6.16.050 of the *Takoma Park Code*, which governs landlords' obligations to tenants, provides, in pertinent part, as follows:

6.16.050 Obligations of landlords.

All landlords shall:

A. Keep all areas of the rental facility, grounds, facilities, equipment and appurtenances in a clean, sanitary and safe condition;

B. Make and bear the costs of all repairs and arrangements necessary to keep the rental unit in compliance with the Property Maintenance Code;

* * *

F. Paint all rental units in their entirety at least once every 5 years. Repainting is not required between tenancies, however all painted surfaces must be in clean condition and free of any peeling or chipping paint at the commencement of a tenancy;

G. Pay for all repairs and maintenance to the rental unit and rental facility;

Section 8-208.1 of the Real Property Article of the *Annotated Code of Maryland*, which is incorporated, as amended, by reference in section 6.16.180 of the *Takoma Park Code*, prohibits landlords from terminating a periodic tenancy for any of the following reasons:

(i) Because the tenant or the tenant's agent has provided written or actual notice of a good faith complaint about an alleged violation of the lease, violation of law, or condition on the leased premises that is a substantial threat to the health or safety of occupants to:

1. The landlord; or
2. Any public agency against the landlord;

(ii) Because the tenant or the tenant's agent has:

1. Filed a lawsuit against the landlord; or

2. Testified or participated in a lawsuit involving the landlord; or
- (iii) Because the tenant has participated in any tenants' organization.

Md. Code Ann., Real Prop. Art., § 8-208.1 (2011).

Month-to-month tenancies constitute periodic tenancies under Maryland law. *See, e.g.*,
Md. Code Ann., Real Prop. Art., §8-402(c) (2011).

III. HEARING AND EVIDENTIARY SUMMARY.

The Tenant entered a two-month lease for Apartment commencing on December 1, 2006, which required her to pay rent on a monthly basis. Exhibit 3.

The Tenant testified that she has had many problems in her Apartment during her tenancy. She testified that there is a problem with the boiler in her building that causes her Apartment to be extremely hot, and that she is afraid to leave her windows open because she lives on the ground floor. She testified that, because of the heat problem, the Landlord agreed to provide her with a free air conditioning in 2008. She testified that the extreme heat causes the walls to crack.

The Tenant testified that her Apartment flooded in 2010 following a major snowstorm. She testified that the Landlord provided heaters and dehumidifiers to her, but that her carpet molded and continues to smell and make her sick. She testified that during rainstorms, water flows in her window, which causes mold and damages her walls. She testified that she received an electric shock from the television in her bedroom because water had run from the window into the electrical outlet where it was plugged in. She testified that her refrigerator often stops working, and, instead of repairing the refrigerator, the Landlord's maintenance man has her empty the refrigerator and then pours hot water into it to defrost it. She also testified that her

upstairs neighbor's shower drains into the walls of her Apartment and that her stove is broken.

The Tenant sent letters to the Landlord in June, August, and November 2011, complaining about the condition of her Apartment. Exhibits 16-18. The Tenant's letters included complaints about the need for her Apartment to be painted, the cracking of the walls because of the boiler, moldy carpeting, insect infestation, a broken refrigerator, and rat infestation. Exhibits 16-18.

She testified that the Landlord repaired the walls and painted the Apartment, but that the swelling of her walls has returned.

The Tenant's son, Christophe Betine, testified that he sometimes parked in the parking space reserved for the Landlord's employees because he returns home from work late at night and is unable to find another parking space near the Apartment. He testified that on the morning of May 23, 2012, the Landlord's on-site Property Manager, Tiffany Dock, came to his Apartment and told his friend to wake him up and have him move his car. He testified that, when he went to move his car, he explained to Ms. Dock, that there were no other parking spaces the prior evening. He testified that they had an argument and that Ms. Dock told him that he would be receiving a sixty-day notice to vacate. He testified that he was polite to Ms. Dock and that she was hostile. The Tenant testified that she has often complained to the Landlord that there is not enough parking at the Property. The Tenant confirmed that Mr. Betine often parked in Ms. Dock's space because there was not enough parking. She testified that the Landlord never notified her that there was a problem with her son's parking in the Manager's space.

Mr. Betine's friend testified that he has been living in the Apartment for six months. He witnessed the argument between Mr. Betine and Ms. Dock on May 23 and he testified that the

argument was not loud and that Mr. Betine did not threaten Ms. Dock. He testified that the argument lasted approximately 6-10 minutes.

The Tenant testified that she filed a complaint about the condition of her Apartment, and a Housing Code Inspector conducted an inspection of the Apartment on May 29, 2011. She testified that the Property Manager saw the Inspector, who was wearing a uniform, come out of her Apartment after the inspection.

The Tenant submitted photographs of the alleged defects in the Apartment, including photographs of stained carpeting, damaged trim, and cracked, stained, and bubbling walls.

Exhibit 12.

The Landlord issued a 60-day no-fault notice to vacate to the Tenant on May 31, 2012, requiring the Tenant to vacate the Apartment by July 31, 2012. Exhibit 7.

In a letter dated June 4, 2012, Housing Code Inspector Cynthia Caudillo notified the Landlord that she had observed four violations in the Tenants Apartment: a defective electrical outlet in the second bedroom, peeling paint throughout the unit, rotten and splitting door trim in the hall, and missing floor tiles in the kitchen. Exhibit 6. The inspector did not find a violation with respect to the carpeting. Inspector Caudillo ordered the Landlord to correct the defects within 30 days, and advised the Landlord that she would reinspect the Apartment on July 5, 2012.

The Tenant testified that the inspector did not notice the moldy carpet because she had covered the old carpet with a new carpet. Inspector Caudillo advised the Housing Department that the Landlord had corrected all of the cited violations when she reinspected the Apartment except for the missing tiles in the kitchen floor, which the Inspector was unable to inspect

because the floor was covered with trash and trash cans.

The Tenant testified that the kitchen was in disarray during the reinspection because the Landlord's painters were still in the Apartment.

The Tenant testified that the Landlord had exhibited hostility toward her on several occasions. She testified that she once held a Labor Day barbecue that the Landlord's maintenance man attended, and then the Landlord threatened to take her grill. She testified that she called to complain to the owner of Hillwood Manor Joint Venture, LLP, Cathy Bernard, and that Ms. Bernard told her that if she did not like living there, she should leave. She testified that the Landlord recently started attempting to charge her a fee for air conditioning and removed an air-conditioning unit from her Apartment, which she had purchased to replace one of the units that the Landlord had supplied as a result of the defective boiler.

The Landlord's counsel argued that the Tenant's lease required her to keep 80% of the floor covered, so she, rather than the Landlord, was responsible for replacing the carpet that was in the Apartment when she moved in.

Ms. Dock, the on-site Property Manager, testified that the Tenant told her that she had gotten married and was moving to Baltimore. She testified that the Tenant showed her a picture of her new house and that she saw the Tenant move her furniture out of the Apartment. Ms. Dock testified that, prior to May 23, 2012, she had told Mr. Betine not to park in her parking space three times. Mr. Betine asserted that other tenants also parked in her space. She testified that the other tenants stopped parking in her space after she told them not to. She testified that Mr. Betine was "mouthy" when she confronted him on May 23, and that he told her, "You work for me." She testified that she was concerned about Mr. Betine's behavior and that she began

locking the door to her office and called Brandi Mayberry, the Landlord's Accountant, who notified John Spaulding, the Landlord's Property Manager, who advised Ms. Dock to give the Tenant a notice to vacate. Ms. Dock testified that she was unaware that the Tenant had filed a complaint with the Code Enforcement Office until she received the June 6, 2012, letter from Inspector Caudillo. She testified that she gave the notice to vacate to the Tenant on May 31 because it is the Landlord's practice to give tenants notices to vacate on the last day of the month.

Ms. Mayberry testified that Mr. Spaulding advised her that he had spoken with Ms. Dock and the maintenance man about the argument with Mr. Betine, and that he had decided that they should issue a notice to vacate to the Tenant. She testified that she prepared the notice to vacate because the person who usually prepares such notices for the Landlord was on leave.

Mr. Spaulding testified that he was not aware of the Tenant's complaint with the Code Enforcement Office. He testified that he spoke with Ms. Dock and with the maintenance man, who had witnessed the incident. He testified that he decided to evict the Tenant because he was worried about the safety of Ms. Dock. He testified that the maintenance man was not at the hearing because he resigned the previous week.

Ms. Dock testified that the carpet in the Apartment was dirty, rather than moldy.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1. The Commission finds that the Tenant's tenancy in the Property commenced on December 1, 2006, and that it converted to a month-to-month tenancy by operation of law on February 1, 2007.

2. The Commission holds that the Tenant, as a month-to-month tenant, is entitled to the protection from retaliatory evictions of section 8-208.1 of the Real Property Article of the *Maryland Code*. The Landlord argues that the previous language of section 8-208.1, which was amended on October 1, 2011, governs retaliatory evictions in the City of Takoma Park because that language is set forth in the Takoma Park Code. Assuming, *arguendo*, that the City's incorporation of section 8-208.1 "as amended" is a static incorporation of the State statute, the Tenant still enjoys the protection of the statute because it excludes from its operation only a landlord's right to "terminate or not renew a tenancy governed by a written lease for a stated term of greater than 1 month at the expiration of the term." As noted above, the Tenant's written lease term expired on January 31, 2007, and she is now a month-to-month tenant. Accordingly, the Landlord's Motion to Dismiss the Tenant's retaliation claim is denied.

3. The Landlord's Motion to Dismiss the Tenant's defective tenancy claim is denied because it is based solely on the uncorroborated factual assertions of its attorney.

4. The Commission finds that the Landlord did not issue the notice to vacate in retaliation for the Tenant's filing of a complaint with the Code Enforcement Office. The only evidence indicating that the Landlord's agents were aware of the Tenant's complaint prior to receiving the June 4, 2012, letter from Inspector Caudillo was the Tenant's testimony that Tiffany Dock witnessed the inspector leaving her Apartment on May 29, 2012. However, multiple witnesses testified that Mr. Betine parked in Ms. Dock's parking space on several occasions, that Mr. Betine was parked in her space on May 23, 2012, and that he and Ms. Dock had an argument about the parking that day. Mr. Betine himself testified that, during the

argument, Ms. Dock told him that he would be receiving a 60-day notice to vacate. Accordingly, the Commission finds that the Landlord issued the notice to vacate because the Tenant's son repeatedly parked in Ms. Dock's parking space and argued with her when she had him move his car from her space on May 23, 2012.

5. The Commission finds that the tenant provided written notice to the Landlord regarding the following conditions in her Apartment: moldy carpeting caused by a flood during a snowstorm, swollen and cracked walls caused by excessive heat from the boiler in the building, and deteriorated paint. Exhibits 16-18. Of the defects raised in the Tenant's Complaint, the only defective condition the Commission finds the Tenant to have proven by a preponderance of the evidence to have existed at the time of the May 29, 2012, inspection of the Apartment, was the poor condition of the walls, which the report indicated required cleaning, scraping, and painting. Exhibit 6. The Commission's finding is based on the June 4, 2012, inspection report of Officer Caudillo, which did not indicate the presence of any of the other alleged defects. The Commission notes that it is unclear from the Tenant's photographs whether the carpeting in her Apartment was moldy or dirty. The Commission finds, based on the testimony of the Tenant and the letters from the Tenant to the Landlord, Exhibits 16-18, that the Landlord failed timely to make good faith efforts to repair the walls and repaint the Apartment, as the Tenant initially gave a written complaint about the walls of her Apartment and the need for repainting to the Landlord in June 2011, and the Landlord did not paint her Apartment until after the May 29, 2012, inspection.

Although the Commission finds that the Landlord caused a defective tenancy, because the Landlord has already corrected the defective condition, and because the Tenant neither

requested nor presented evidence of damages, the Commission is unable to provide the Tenant with a remedy.

The Commission notes that, with respect to the allegedly moldy carpeting, the Inspector's failure to identify it as a defect may be the result of the Tenant's installation of new carpeting over the old carpeting. If the carpet is in fact moldy, the Commission notes that the Landlord's argument that carpeting present in a rental unit at the commencement of a new tenancy becomes the personal property of the new tenant, and, therefore, the responsibility of the new tenant, to be spurious. Because of the significant health risks associated with mold, the Commission recommends that the Landlord investigate the condition of the carpet and the issue of water leaking into the Apartment before leasing the unit to a new tenant.

V. ORDER.

Accordingly, it is this 3rd day of August 2012, by the City of Takoma Park Commission on Landlord-Tenant Affairs,

ORDERED that the relief requested by the Tenant is DENIED.

Jarrett K. Smith, Presiding Commissioner

Lauren Price, Commissioner

Catherine Wakelyn, 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.