

CITY OF TAKOMA PARK
COMMISSION ON LANDLORD-TENANT AFFAIRS

Michael Douma and
Maria-Jose Vinas
7108 Maple Ave., #2
Takoma Park, MD 20912

Tenants

v.

Thomas Twomey
650 Gillums Ridge Road
Charlottesville, VA 22903

Landlord

COLTA Case No. 2012-07T

OPINION AND ORDER

I. INTRODUCTION.

On July 30, 2012, Michael Douma and Maria-Jose Vinas (“Tenants”), the tenants of 7108 Maple Ave., #2, Takoma Park, Maryland (“Apartment”), filed a Complaint with the City of Takoma Park Commission on Landlord-Tenant Affairs (“COLTA” or “Commission”) against Thomas Twomey (“Landlord”), the owner of 7108 Maple Ave, part of a four unit condominium building that includes 7106 Maple Avenue (“Property”). This Complaint was docketed as COLTA Case No. 2012-07T.

The Tenants’ Complaint alleged that the Landlord declined to renew their lease for an

additional year in retaliation for their written complaints to the Landlord about alleged defects at the Property and their filing of an administrative complaint with the Montgomery County Department of Housing and Community Affairs. The Tenants' Complaint also alleged that the Landlord declined to renew their lease because he had filed a Fair Return Rent Increase Petition, which the Tenants allege would enable the Landlord to increase the rent for their Apartment sooner if the Landlord did not renew their lease. The Tenants requested that the Commission require the Landlord to extend their lease for an additional three years and that the Commission give them the right to terminate their tenancy at any time, for any reason, with thirty days' written notice.

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 21, 2012. The Tenants and the Landlord were present at the hearing. The Tenants, as the parties filing the Complaint, have the burden of proof by a preponderance of the evidence. *Takoma Park Code* §6.24.080(J).

II. APPLICABLE LAW.

a. Retaliation.

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).

A periodic tenancy is a “tenancy that automatically continues for successive periods—usu. month to month or year to year—unless terminated at the end of a period by notice.” *Black's Law Dictionary* (9th ed. 2009).

b. Lease renewal.

Section 6.16.070, which governs residential lease renewal requirements provides as follows:

D. The landlord shall offer the tenant the opportunity to renew a lease of one-year or more for an additional term of one year at least 2 months prior to the end of each lease term unless:

1. The landlord has given the tenant notice to vacate, except that the landlord shall not give a 2-month no fault notice to vacate at the expiration of the initial one-year lease term; or
2. The tenant has given the landlord notice of intent to vacate; or
3. At least 2 months before the end of the lease term, the landlord has provided the tenant with a written statement of the landlord's reasonable cause for offering a lease term of less than one year.

E. If a landlord fails to offer the tenant a one-year lease renewal without stating in writing the landlord's reasonable cause for offering a term of less than one year, as required by subsections (C) or (D)(3) of this section, then, at the sole option of the tenant, the tenant shall be presumed to have a one-year lease.

F. “Reasonable cause” shall include those situations in which:

1. It would create a hardship for a landlord to enter into or renew a one-year lease.
2. The landlord is selling the rental facility and settlement on the sale is to occur within a one-year period.
3. The landlord intends to occupy the rental unit or make it available for use by a family member. Any landlord utilizing this provision shall not lease the rental unit during the 12-month period beginning on the date of recovery of possession.

4. The landlord is making alterations or renovations or is conducting substantial rehabilitation to a rental unit or rental facility which cannot safely or reasonably be accomplished while the rental unit or rental facility is occupied. Any displaced tenant shall have a right to lease the rental unit upon completion of such work.

III. EVIDENTIARY AND HEARING SUMMARY.

The Tenants entered into a lease for the Apartment commencing October 1, 2011. Exhibit 4. The lease included an offer of a two-year lease, which the Tenants rejected. *Id.* The Tenants testified that they did not accept the two-year lease offer because they were concerned about the condition of the Property. The Apartment is one of two second floor units in a four-unit condominium building, with one side, 7108 Maple, owned by the Landlord, and the other side, 7106 Maple, owned by his daughter, Heather Twomey.

Email correspondence between the Tenants and Landlord, Exhibits 3 and 8, and the testimony of the Tenants and Landlord indicate that the Tenants frequently requested that the Landlord make repairs and upgrades to the Property and assisted the Landlord's handymen in purchasing materials (for which the Landlord reimbursed them) and performing the labor without charge.

The Tenants also voluntarily made numerous alterations to the Property, including repainting the interior of the Property, constructing and planting a raised-bed garden in the front yard, installing extensive shelving in the basement of the Property, constructing a laundry table, installing a pulley system on their porch to carry groceries to their Apartment, removing a tree from the front yard, and installing custom shelving in the bathroom of their unit.

The Tenants' removal of the tree, which was located in the vicinity of their garden, is a point of contention between the Tenants and the Landlord. The Tenants, in an April 9, 2012, email to the

Landlord, described the tree as “half dead.” Exhibit 3. In their Complaint, they described it as “a two-inch wide, 5-ft. tall dead tree that had been rotting in the front yard for months.” Exhibit 3. The Tenants submitted a grainy August 2011 photograph of the tree with their Complaint in which the tree is almost invisible. The Tenants testified that they obtained the Landlord’s permission to remove the tree via telephone. The Tenants testified that there was a drought in 2011 and that the Landlord did not water the tree during the drought, which caused it to die.

The Landlord testified that he had the tree planted by the City to replace a large, dead tree that he had to remove from the Property. He testified that he did not give the Tenants permission to remove the tree. He testified that he paid a neighbor to water the tree for the first year after he planted it, and that it was in good condition before the Tenants removed it. The Landlord submitted a photograph of the tree from April 2011 that shows the tree leafing out, and the tree appears to be fifteen to twenty feet tall, as the top of the tree is at or above the level of the second floor balcony of the building on the Property. Exhibit 8.

The Tenants’ installation of shelving in the basement and their other activity in the basement is also a point of contention. The Tenants’ photographs, Exhibit 3, show that the shelving they installed was extensive. They testified that the basement of the Property was divided into four units plus a laundry room, with one unit for each apartment in the Property, and a laundry room for the use of the tenants of three of the apartments, the fourth apartment having its own laundry facilities. The Tenants testified that they did not impede upon the other tenants’ space in the basement. They also asserted that the shelves easily could be removed by unscrewing them. The Tenants testified that they moved from a house with a full basement, and they would not have rented the Apartment if they did not believe they had a right to use the basement.

The Landlord testified that the Tenants had not obtained permission to install the shelving

and that it impeded upon the other tenants' access to the basement and laundry facilities. The Landlord testified that the tenants' activities in the common areas of the Property caused three other tenants to threaten to move out of the Property and that the tenants in the units in 7106 Maple demanded that he and his co-owner get the Tenants "under control." The Landlord testified that the Tenants moved the property that he had left in the basement into a corner and filled the basement with their possessions. In an email dated February 14, 2012, Mr. Douma advised the Landlord that he found "an old, broken inflatable boat" hanging in the basement and moved it outside. The Landlord responded that when he stored the boat, it was in good condition.

The lease requires the Tenants to obtain the Landlord's written permission before making any alterations to the premises and prohibits them from driving nails or other devices into the walls other than a reasonable number of picture hangers. Exhibit 4. The lease does not address the Tenants' right to use the basement of the Property.

In a letter dated July 14, 2012, the Landlord notified the Tenants that he would not be renewing their lease and requested that they vacate their Apartment by the end of their lease term, September 30, 2012. Exhibit 5. The Landlord did not provide an explanation for his decision not to renew the lease. The letter indicated that it was a follow up to his email of April 10, 2012, in which he had notified them of his decision not to renew their lease. Exhibit 5.

In a letter dated July 23, 2012, the Tenants responded that they were disappointed and surprised by the Landlord's July 14 letter. Exhibit 6. The Tenants asserted that the Landlord did not have cause not to renew the lease and requested a one or two-year lease renewal. Exhibit 6. The Tenants did not address the Landlord's assertion that he had given them notice by email on April 10, 2012. Exhibit 6.

In a letter dated July 24, 2012, the Landlord advised the Tenants that he was not renewing

their lease because they had not complied with the terms of their lease or his written rules regarding the Property. Exhibit 7. Specifically, the Landlord stated, “You have made numerous alterations to the property without asking permission such all [sic] the work in the basement and removing the tree in the front yard.” Exhibit 7. The Landlord also advised the Tenants that he would be remodeling the existing bathroom in their Apartment and installing a second bathroom. Exhibit 7.

The Landlord submitted copies of two emails dated April 10, 2012. The first, sent to his daughter, Heather Twomey, at 6:39 a.m., was a draft of a notice to the Tenants that he would not be renewing their lease because he and Ms. Twomey were concerned about inharmonious relationships between the Tenants and the other tenants at the Property and between the Tenants and the Landlord. Exhibit 8. The second, sent to the Tenants at 9:43 a.m., was substantially similar to the draft, and advised the Tenants, “It is most important to Heather and I that individuals renting our property enjoy their homes, live in harmony with their neighbors, and that we, as landlords, experience ease in the management of the building. We, therefore, have decided not to renew your lease for another year.”

The Tenants denied receiving the April 10, 2012, email from the Landlord. Ms. Vinas testified that it must have been redirected as spam.

The Tenants filed a complaint with the Montgomery County Department of Housing and Community Affairs dated April 10, 2012, which the Commission received on April 11, 2012. Exhibit 3. The Tenants made 36 specific complaints about the Property, including, *inter alia*, complaints about a missing fire extinguisher, an inadequate lock on the front porch door, overloaded circuit breakers, unclean common areas, flaking exterior paint, insufficient electrical outlets in the master bedroom, failure to confirm that their security deposit is in a separate bank account, a compost pile that is not protected from rodents, and cracked and chipped concrete

walkways. The Tenants also accused the Landlord of making “discriminatory comments about Viña’s Latino culture.” The Tenants asserted that they called the Landlord on April 10, 2012, to advise him that they had filed the complaint.

Email correspondence between Mr. Douma and the Landlord, Exhibits 3 and 8, reveals that in November 2011, the he and the Landlord’s handyman installed a new bathroom sink in the Apartment and repaired the interior doors and that the Landlord reimbursed the Tenants for the cost of materials. The email correspondence further reveals that the Landlord purchased a new stove for the Apartment in December 2011, and that two of the six burners on the stove were too close to the refrigerator to safely operate without a heat shield. The emails also document that Mr. Douma and the Landlord’s handyman completed other repairs and upgrades, including the replacement of electrical boxes and circuits, the installation of motion sensitive lights, plaster work, and the repair of the doors in the Apartment. The Landlord and Tenants corresponded frequently and amicably from November 2011 through April 2, 2012.

In an April 1, 2012, the Tenants advised the Landlord that they had seen some cockroaches in their Apartment. On April 2, the Landlord responded that his Handyman should have the chemicals to treat the infestation.

The Landlord testified that he had disputes with the Tenants regarding the storage of gardening equipment and supplies at the property, including empty pots and the Tenants’ wheelbarrow, and that the Tenants had installed deer fencing around their garden without his permission. The Tenants asserted that they had obtained the Landlord’s authorization for the deer fence via telephone. Exhibit 3.

In an email to the Tenants dated April 7, 2012, Exhibit 3, the Landlord discussed several issues relating to the Property. He indicated that he wanted to eliminate the storage of tools and

materials on the Property. He stated that he had instructed his handyman to remove his (the Landlord's) ladders, unused trash cans, and any other unnecessary materials. He indicated that the Tenants had already agreed to store their ladder at Mr. Douma's mother's house, not to plant additional potted plants, and to remove the pulley from their porch. He asked that they return their extra pots or store them at Mr. Douma's mother's house. He also asked that the Tenants remove their wheelbarrow from the property and use his wheelbarrow. The Landlord also advised the Tenants that the other tenants in the property were complaining that they were storing their belongings in the shared laundry room. Finally, the Landlord advised the Tenants that he had decided not to enclose the space under the rear stairs of the Property.

Mr. Douma responded in an email to the Landlord dated April 9, 2012. Exhibit 3. Mr. Douma complained that the Tenants' garden was suffering animal damage because of the lack of fencing. Mr. Douma further stated,

In the last month, you have initiated an unfair tide of new regulations against Maria-Jose and I: You have demanded that we not fence our vegetables. . . neither cage, net, or use large stakes for vegetables; eliminate outdoor storage for simple bins, hoses, etc; refrain from adding container gardens; remove our wheel barrow; remove a pulley from our personal back porch; and you question use of [sic] our personal basement storage area.

Mr. Douma also stated, "I am concerned that the discussion about storage and common spaces has lost perspective, and been over-dominated by [7106 Maple tenant] David Ward's elitist ('anti-Appalachian') and abusive complaints." Mr. Douma indicated that, in the future, he and Ms. Vinas would "be more careful to discuss common areas by email, not verbally, so that fellow tenants have more time to think about our proposals." Mr. Douma complained about the Landlord's refusal to enclose the area beneath the rear steps of the Property, describing the back of the property as "ugly," and requesting that the Landlord install a paved back porch. He advised the Landlord that he would have to store his extra pots, his wheelbarrow, and his ladder at the Property. He insisted

that the Landlord either install a hose by April 13 or allow him to keep a hose attached to the spigot in the front yard. He requested permission to store his wheel barrow, planting tables, and 1-2 bins of potting soil in the side yard of the Property.

The Tenants asserted that the Landlord's decision not to renew their lease was also motivated by his desire to increase the rent for their Apartment. They alleged that the Landlord had filed a Fair Return Rent Increase Petition and would be able to increase the rent for their Apartment sooner if they were no longer tenants. The Landlord testified that the pending rent increase petition did not influence his decision not to renew the Tenants' lease.

In an email dated May 7, 2012, Mr. Douma complained about the length of the grass in the yard at the Property, a missing window screen, and continued cockroach infestation. Mr. Douma advised the Landlord that he could not find the fire extinguisher in the Apartment and inquired where the Landlord kept his security deposit.

Mr. Douma testified that he and Ms. Vinas get along with their downstairs neighbor and that they do not interact with the Tenants in 7106 Maple. The Landlord testified that there is still tension between the Tenants and the other residents of the Property.

Regarding the remodeling of the existing bathroom and the installation of a new bathroom in the Tenants' Apartment, the Landlord testified that he would like to do the work soon because he is 76 years old and would like to complete the work before he gives the Property to his children. The Landlord testified that, if the law requires him to allow the Tenants to move back into the Apartment after he completes the remodeling, then he will do so. He testified that he did not include an offer to allow them to move back in because he thought it was up to the Tenants to request to move back in.

In a letter dated May 15, 2012, the Landlord advised the Tenants that their rent would

increase on August 1, 2012. On May 21, 2012, after the Tenants objected to the increase, the Landlord explained that he typically increases the rent every August but that he forgot to include a rent escalation clause in the Tenants' lease. He apologized and advised them to disregard the notice. The Tenants argued that the Landlord's rent increase notice demonstrates that the Landlord had not decided not to renew their lease as of May 15.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1. The Commission finds that the Tenants entered into a lease for the Apartment commencing on October 1, 2011, and terminating on September 30, 2012.

2. The Commission holds that the Tenants have failed to state a claim under section 8-208.1, Retaliatory Actions, of the Real Property Article of the *Maryland Code* because that section does not preclude the termination of a tenancy at the end of a specified term. Rather, that section protects from retaliation only tenants with a periodic tenancy, such as a month to month or week to week tenancy. Assuming, *arguendo*, that section 8-208.1 protects the Tenants from retaliation, the Commission finds that the Landlord did not decline to renew the Tenants' lease because the Tenants filed a complaint with the Montgomery County Office of Landlord-Tenant Affairs or because the Tenants complained directly to him about alleged violations of the lease, the law, or the condition of the Property. Rather, the Commission finds that the Landlord declined to renew the lease because the Tenants (1) refused to remove their possessions from the outside of the Property as requested by the Landlord, (2) interfered with the other tenants' use of the common areas in the basement of the property by filling it with their possessions, and (3) made alterations to the property without the Landlord's permission, including removing a tree planted by the Landlord, installing deer fencing in the yard, installing shelving in the basement, and installing a pulley on the porch.

The Commission finds, based on the Landlord's emails, that the Landlord decided not to

renew the Tenants' lease at or before 6:39 a.m. on April 10, 2012, and that he advised the Tenants that he would not be renewing their lease at 9:46 a.m. on April 10, 2012. The Commission does not find credible the Tenants' assertion that they did not receive the Landlord's April 10 e-mail or their assertion that they filed their complaint with the Montgomery County Office of Landlord-Tenant Affairs before the Landlord decided not to renew their tenancy.

3. The Commission holds that the Tenants are not entitled to a one-year lease renewal under section 6.16.170 of the *Takoma Park Code*. The Commission finds that the Landlord timely gave the Tenants a written statement of reasonable cause for not renewing their lease for an additional year when, in his April 10, 2012, email, he advised them, "It is most important to Heather and I that individuals renting our property enjoy their homes, live in harmony with their neighbors, and that we, as landlords, experience ease in the management of the building. We, therefore, have decided not to renew your lease for another year."

The Commission finds that the Landlord's stated cause, the Tenants' inability to get along with their neighbors and the difficulty of managing the Property with the Tenants present, to sufficiently indicate that the Landlord would suffer a hardship to enter into an additional one-year lease. The Commission finds, based on the testimony of the Landlord and the email correspondence between the Landlord and the Tenants, that the Tenants did not get along with their neighbors, causing the other tenants to threaten to move out, and that the Tenants did make it unreasonably difficult for the Landlord to manage the property, as the Tenants refused to adhere to his instructions to remove their tools and equipment from the outside of the Property, performed alterations without his permission, and usurped the common basement of the Property for their own use.

The Commission further finds that the Landlord provided timely written notice of

reasonable cause for not renewing the lease in his letter of July 24, 2012, when he advised the Tenants that he was not renewing the lease because they had failed to comply with the lease and the rules of the Property, including making alterations to the Property without written permission. The Commission finds, based on the email correspondence between the Landlord and the Tenant and the testimony of the Landlord, that the Tenants refused to adhere to the Landlord's rules and that the Tenants made alterations to the Property without the Landlord's consent, written or otherwise. For example, the Commission does not find the Tenants' assertion that the tree that they removed from the front yard was dead or that the Landlord gave them permission to remove the tree to be credible. The Tenants described the tree as being only five feet tall and, alternatively, "half dead" and "dead and rotting," whereas the Landlord submitted a photograph of the tree demonstrating that it was approximately fifteen or twenty feet tall and healthy in April 2011. The Commission finds it implausible that the Landlord would grant the Tenants permission to remove a tree that he had planted. Rather, it appears to the Commission that the Tenants removed the Tree because it was located in or near where they intended to plant their garden. Again, the Commission holds that, given the Tenants' refusal to adhere to the Landlord's rules regarding the common areas of the Property and the Tenants' practice of making alterations to the Property without the Landlord's permission, renewal of the Tenants' lease would create a hardship for the Landlord.

The Commission also finds that the Landlord provided timely written notice of reasonable cause for not renewing the lease in his letter of July 24, 2012, when he advised the Tenants that he was not renewing the lease because he would be remodeling the existing bathroom and installing a second bathroom in the Apartment. Such a significant project cannot reasonably be accomplished in an apartment when it is occupied. Accordingly, the project constitutes reasonable cause under section 6.16.070(F)(4). Although, under section 6.16.070(F)(4), a tenant whose lease is not

renewed because of planned renovations has a right to lease the rental unit upon completion of the renovations, in this case, the Tenants have no such right because the Landlord also had reasonable cause not to renew their lease pursuant to section 6.16.070(F)(1).

VI. ORDER.

Upon consideration of the complaint, exhibits, and any evidence presented at the hearing in this case, it is this 6th day of September 2012, by the City of Takoma Park Commission on Landlord-Tenant Affairs:

ORDERED, that the relief requested by the Tenants is DENIED.

Catherine Wakelyn, Presiding Commissioner

Victoria Sutton, Commissioner

Gehmelle Johnson, 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.