

Komi Akpadja)	
7401 New Hampshire Avenue, #112)	
Takoma Park, MD 20912)	
(Tenant))	
)	
vs.)	Case No. 2012-09T
)	
7401 New Hampshire Avenue, LLC)	
7401 New Hampshire Avenue)	
Takoma Park, MD 20912)	
)	
and)	
)	
Dreyfuss Management)	
4800 Montgomery Lane)	
Bethesda, MD 20814)	
)	
(Landlord))	
_____)	

OPINION AND ORDER

I. INTRODUCTION.

On September 23, 2012, Komi Akpadja (“Tenant”), the tenant of 7401 New Hampshire Avenue, #112, Takoma Park, Maryland (“Apartment”), filed a Complaint with the City of Takoma Park Commission on Landlord-Tenant Affairs (“COLTA” or “Commission”) against 7401 New Hampshire Avenue, LLC, the owner of the apartment building located at 7401 New Hampshire Avenue (“Property”), and its managing agent, Dreyfuss Management (collectively, “Landlord”). This Complaint was docketed as COLTA Case No. 2012-09T.

The Tenant’s Complaint alleged that the Landlord terminated his tenancy in retaliation for his complaints to the Landlord and the Montgomery County Code Enforcement Office about alleged defects at the Apartment. The Tenant requested that the Commission prohibit the

Landlord from terminating his tenancy.

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 an emergency public hearing on October 9, 2012. The Tenants and the Landlord were 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).

II. APPLICABLE LAW.

Section 8-208.1 of the Real Property Article of the *Annotated Code of Maryland*, which is incorporated, as amended, 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).

III. EVIDENTIARY AND HEARING SUMMARY.

The Tenant entered into a lease for the Apartment commencing October 1, 2004. Exhibit 4. In a letter dated July 20, 2012, the Landlord notified the Tenant that it would be terminating his tenancy effective September 30, 2012. Exhibit 5.

The Tenant submitted copies of a written complaint that he made to the Montgomery County Code Enforcement Office dated May 12, 2011, and a written complaint that he made to the Landlord dated August 7, 2010. The Tenant also submitted an email dated March 12, 2012, that he sent in response to an email notifying him of the completion of a work order, disputing that the work was in fact completed. Exhibit 14. However, the Tenant's email was addressed to a "no-reply" email address.

The Tenant testified that he called the Landlord's hotline to report that his Apartment had bedbugs in April 2012. He testified that other units in the Property also had bedbugs.

The Landlord, in a letter dated May 18, 2012, notified the Tenant that it had confirmed that his Apartment was infested with bedbugs. Exhibit 6. The Landlord enclosed with the letter a "Unit # 112 Heat Remediation Treatment Preparation List," which it required the Tenant to sign and return before it would exterminate his Apartment. The List advised the Tenant that his Apartment did not have bedbugs when he moved in, and, therefore, he would be responsible for paying for any subsequent bed bug treatments after the Landlord provided the first treatment. Exhibit 6. The list also notified the Tenant that he was responsible for preparing his Apartment for treatment and that he would be charged \$150.00 if the Landlord's staff had to prepare his Apartment, and, in direct contradiction to that notice, the list advised the Tenant that he would be charged \$725.00 if he did not prepare his Apartment for treatment.

In a letter dated May 30, 2012, the Tenant advised the Landlord that he objected to the

Landlord's threat to charge him for subsequent bed bug treatments if the first treatment was not successful and noting that it was impossible to determine whether he was the source of bedbugs in the Property. Exhibit 9.

In a notice from Maryland Termite and Pest Control to the Tenant dated June 5, 2012, the extermination technician advised the Tenant that he was not able to treat his Apartment because the Tenant did not complete the preparation. Exhibit 10. The Tenant testified that the technician's notice was not accurate, as it cited out-of-place items that the Tenant did not have in his Apartment. A notice from Maryland Termite and Pest Control dated June 8, 2012, advised the Tenant that his Apartment would be treated for bedbugs on June 11, 2012. Exhibit 16. The Tenant testified that he did not have time to prepare his Apartment for the June 11 treatment because of the short notice. However, he testified that the technician said he could still treat the Apartment that day, but that the Property Manager, Simona Peterson, told the technician not to do so. The Tenant also testified that his Apartment was almost ready on June 11, but that he needed an additional five minutes to finish preparing for the treatment because he was unsure what to do with certain items. The Tenant asserted that a member of the Landlord's staff, Alonzo Smith, witnessed the technician stating that he could proceed with the treatment. At the hearing, Mr. Smith denied the Tenant's assertion, and testified that the technician advised the Tenant that he could not proceed with the treatment that day.

The Tenant testified that a third treatment date was scheduled and that he prepared his Apartment, but that he had to leave his Apartment briefly that day. He testified that when he returned he found the exterminators working in an upstairs unit and they told him that they did not have enough workers to treat his Apartment that day. He testified that he then went to the

Property Manager, Simona Peterson, and she told him that his Apartment was not treated because his Apartment was not prepared.

The Tenant testified that one of the owners of the Property Managers advised him on June 29, 2012, that the Landlord was building a legal case against him.

Ms. Peterson testified that the Property has 216 units. She testified that many units were infested with bedbugs, and that units on the first and second floors of the Property had to be treated for bedbugs using heat instead of chemical pesticides. She testified that there had been more than ten heat treatments at the Property in 2012. She testified that the heat treatment was expensive and time consuming, and that it was not effective if the units were not properly prepared because the bedbugs would hide in cool spots in the tenants' possessions. She testified that most tenants had their units properly prepared for their second scheduled treatment. She testified that the Tenant piled everything in the center of the rooms in his Apartment, that he did not hang up his clothes on hangers as required, and that he left heat sensitive items in his Apartment. She testified that, because the heat treatment process takes eight to ten hours, the exterminator could not wait for tenants to prepare their apartments on the day the treatment was scheduled.

She testified that she decided to issue the notice to vacate to the Tenant because the Tenant failed to prepare his Apartment for the third scheduled treatment. She testified that she met with the Tenant following the third scheduled treatment to explain how to prepare his Apartment. In a letter dated July 24, 2012, Ms. Peterson invited the Tenant to meet with her to go over the extermination preparation instructions on August 1, 2012. Exhibit 17. Ms. Peterson testified that the extermination technician was able to treat the Tenant's Apartment on August 3,

2012. She testified that the Tenant's Apartment was 95% prepared for the treatment on August 3.

The Landlord presented a video showing the Tenant's unit, which Ms. Peterson testified she made on the day of the third scheduled treatment, that revealed that the Tenant's Apartment was not prepared in accordance with the preparation checklist. For example, in the video, the Tenant's clothes were piled on the floor, the Tenant's belongings were tightly packed in the center of the rooms, the trash was not emptied, and cases of plastic water bottles were stacked in the kitchen. The Tenant confirmed that the video accurately represented the condition of his Apartment, but he testified that he thought it was made on June 11, the date the second treatment was scheduled.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1. The Commission finds that the Tenant entered into a one-year lease for the Apartment commencing on October 1, 2004, and that the tenant became a month-to-month tenant by operation of law on September 30, 2005.

2. The Commissions holds that the Tenant failed to prove that the Landlord issued the July 20, 2012, Notice to Vacate because the Tenant made a complaint protected under Section 8-208.1 of the Real Property Article of the *Annotated Code of Maryland*. Rather, the Commission finds that the Landlord issued the Notice to Vacate because the Tenant repeatedly failed properly to prepare his Apartment for scheduled bedbug extermination treatments.

The Commission notes that, as a matter of law, the Landlord's issuance of a notice to vacate to the Tenant on July 20, 2012, may not be deemed retaliation for the Tenant's August 7,

2010, written complaint to the Landlord or his May 12, 2011, written complaint to the Montgomery County Code Enforcement Office because those complaints preceded the issuance of the notice to vacate by more than six months. *See Md. Code Ann.*, Real Prop. Art., § 8-208.1(e).

The Commission finds, based on the testimony of the Landlord's agents, the admissions of the Tenant, and the video presented by the Landlord, that the Tenant failed properly to prepare his Apartment for a bedbug extermination treatment on several occasions. The Tenant conceded that he did not prepare his Apartment for the first scheduled treatment because he did not receive adequate notice from the Landlord. The video presented by the Landlord clearly reveals that the Tenant's Apartment was not ready to be treated at the time the video was made. Although the Tenant testified that the video was shot on the second scheduled treatment date, and Ms. Peterson testified that it was shot on the third scheduled treatment date, the Commission finds Ms. Peterson's testimony to be more credible, as the Tenant was not present in the video, which is consistent with the Tenant's testimony that he was not home when the exterminator came to his Apartment for the third scheduled treatment. In addition, the Tenant testified that his Apartment was nearly ready to be treated on the second scheduled treatment date, but that he was unsure what to do with certain items and needed an additional five minutes to finish his preparation. However, in the video, the Apartment clearly is far from ready for the extermination treatment.

Moreover, even assuming that the video submitted by the Landlord did not show the condition of the Tenants' Apartment at the time of the third scheduled treatment, the other evidence in this proceeding is sufficient to demonstrate to the Commission that the Landlord did

not issue the notice to vacate to the Tenant in retaliation for the Tenant's complaints.

Although the Tenant failed to prove that the Landlord's termination of his tenancy was retaliatory, the Commission finds the Landlord's approach to the treatment of the Property for the bedbug infestation to be troubling. Under the Property Maintenance Code, the owner of a multi-family rental facility is responsible for exterminating an infestation if the infestation affects more than one unit in the facility. *Montgomery County Code* §26-9(a)(9)(A). In this case, the Landlord conceded that it had an ongoing bedbug infestation throughout the Property. The Landlord baselessly blamed the Tenant for causing the infestation in his Apartment, threatened, in writing, to charge the Tenant for any subsequent treatments if his Apartment was still infested following the first treatment, and advised the Tenant that his Apartment would not be treated unless he agreed to accept financial responsibility for subsequent treatments.

In addition, the Commission notes that the instructions provided to the Tenant for the preparation of his Apartment for treatment were confusing and internally inconsistent. For example, the instructions advise tenants to stand mattresses against the wall, but also advise tenants to move their possessions at least three feet from the wall. They advise tenants to leave all of their furniture in the unit but also advise them to remove all heirlooms and irreplaceable possessions from the unit.

Finally, the Landlord clearly did not make good faith efforts to assist the Tenant in preparing his Apartment for treatment. Ms. Peterson did not offer to meet with the Tenant to explain what he had to do to prepare his Apartment until after she had issued Tenant the notice to vacate.

V. ORDER.

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

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

Christopher King,
Presiding Commissioner

Peter Munger, 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 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.