City of Takoma Park, Maryland

MUNICIPAL BUILDING
7500 MAPLE AVENUE
TAKOMA PARK, MD 20912

CITY OF TAKOMA PARK, MARYLAND
COMMISSION ON LANDLORD-TENANT AFFAIRS

Cheryl L. Harper-Gonzalez 102 Warwick Shore Lane, M Glen Burnie, MD 20912 Tenant v. Hillwood Manor Apartments Joint Venture, LLP and its agent, CSB Associates Management Corporation P.O. Box 647 Riverdale, MD 20738 Landlord	COLTA Case No. 10-01T

OPINION AND ORDER

I. INTRODUCTION.

On January 20, 2010, Cheryl L. Harper-Gonzalez, a former tenant of 1214 Myrtle Avenue #1, Takoma Park, Maryland ("Apartment"), filed a Complaint with the City of Takoma Park, Commission on Landlord-Tenant Affairs ("COLTA" or "Commission") against the owner of the Apartment, Hillwood Manor Joint Venture, LLP, and the owner's managing agent, CSB Associates Management Corporation ("Landlord"). This Complaint was docketed as COLTA Case No. 10-01T.

The Tenant's Complaint alleged that the Landlord was charging monthly rents that were higher than the rent amount allowed for her Apartment under the City's rent stabilization law. As

relief, the Tenant requested reimbursement of the alleged rent overcharges. Exhibit 3. The Landlord responded to the Complaint with a general denial. Exhibit 7.

The Commission has jurisdiction over this matter 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 Tenant's Complaint on March 16, 2010. The Tenant was present at the hearing and testified. Jean Kerr, Housing Specialist, of the City of Takoma Park Office on Landlord-Tenant Affairs also testified. John Spalding attended the hearing on behalf of the Landlord. John Barr, Esq., represented the Landlord. The Tenant, as the complaining party, has the burden of proof by a preponderance of the evidence. Section 6.24.080(J).

II. APPLICABLE LAW.

Section 6.16.160 prohibits landlords from imposing an illegal rent. Under the City's rent stabilization law, landlords, for each rental facility they own, must file an Annual Rent Report with the City's Housing Department by September 30 that certifies the monthly rents charged at the property during the one-year period ending on the preceding June 30. Section 6.20.080. Landlords may increase the rent for each unit once a year pursuant to the City's Annual Rent Stabilization Allowance, which is calculated based on the Consumer Price Index. Section 6.20.060. In addition, landlords may obtain permission to further increase the rent by filing a Rent Increase Petition that demonstrates that the landlord's net operating income from a property has decreased. Section 6.20.090. Landlords who do not implement an Annual Rent Stabilization Allowance increase for a rental unit within one year must record the unused rent increase on the Annual Rent Report and may

not implement the unused rent increase until the unit becomes vacant. Section 6.20.070.[1]

Tenants must file illegal rent complaints within three years of the date of the occurrence. Section 6.24.060(B).

III. PRELIMINARY MATTERS.

The Landlord, at the commencement of the hearing the Landlord also argued that the City lacks the authority to regulate rents and lacks the authority to establish the Commission. The Commission is unable to rule on the validity of City law.

III. EVIDENTIARY AND HEARING SUMMARY.

The Tenant entered into a one-year lease for the Apartment commencing on March 1, 2006. Exhibit 3. The lease required the Tenant to pay monthly rent of $775.00. Exhibit 2A.

The Tenant asserted that the Landlord increased the monthly rent for her Apartment to $817.00 on March 1, 2008, and to $855.00 on April 1, 2009. Exhibit 2. She testified that she was unsure whether the Landlord increased the monthly rent for her unit in 2007. The Tenant testified that she vacated her Apartment on June 30, 2009. She testified that paid all of the rent that the Landlord charged her. She testified that she paid her rent with the money orders in Exhibit 6, but that they did not represent the precise amount the Landlord charged her because she sometimes overpaid her rent when she could not remember the exact amount and the Landlord would then credit her account. She testified that she paid each month's rent with multiple money orders because she was not able to purchase money orders in a denomination large enough to cover her entire monthly rent.

The Landlord, in its 2005 Annual Rent Report, stated that the monthly rent for the Tenant's

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[1] A landlord wishing to implement unused Annual Rent Stabilization Allowance increases that predate the 1992 enactment of the Annual Rent Report requirement must first submit documentation to the Department of Housing and Community Development proving that it did not implement those increases.

Apartment was $623 as of June 30, 2005, and that the tenancy of the tenant then residing in the Apartment had commenced in June 2005. Exhibit 11. The Landlord did not indicate that it had any unimplemented rent increases for the Apartment by reporting an allowable rent in column J of its 2005 Annual Rent Report. Exhibit 11.

In its 2006 Annual Rent Report, the Landlord stated that the monthly rent for the Tenant's Apartment decreased from $656.00 to $623.00 on June 1, 2006, that the tenancy of the tenant then residing in the apartment had commenced in June 2005, and that the allowable rent increased to $638.08 as of June 1, 2006. Exhibit 12.

Jean Kerr testified that her duties as a Housing Specialist include overseeing the City's rent stabilization program and monitoring rents charged by landlords in the City. She testified that she received a letter from Bryan Foster, a former employee of the Landlord, stating that the Landlord had been charging rents for the Property that were higher than the rents it reported on its Annual Rent Reports. As a result of Mr. Foster's letter, Ms. Kerr sent letters to the tenants of the Property inquiring about the rents the Landlord was charging for their units. She testified that the tenants' responses indicated that the rents the Landlord was charging its tenants were greater than the rents the Landlord reported in the Annual Rent Reports it had filed with the City from 2005 through 2007.

Ms. Kerr stated that the maximum legal rent for the Tenant's Apartment at the commencement of her tenancy on March 1, 2006, was $682.00. She testified that she calculated the maximum legal rent by looking to the Landlord's 2005 Annual Rent Report, which indicated that it had decreased the monthly rent for the Apartment from $656.00 to $623.00 during that reporting period (July 1, 2004, through June 30, 2005). She testified that, at the time the previous tenant vacated the Apartment and the Tenant moved in, the Landlord was entitled to increase the rent to the

maximum allowable rent, which she calculated by taking the $656.00 monthly rent that Landlord had reported for the Apartment prior to June 2005 and applying the 1.9% Annual Rent Stabilization Allowance for July 1, 2004 through June 30, 2005, and the 2.1% Annual Rent Stabilization Allowance for July 1, 2005, through June 30, 2006. She testified that she looked back to the 2005 Rent Report because it comported with the rents the Landlord reported for the Apartment in the 2004 Annual Rent Report.

Ms. Kerr testified that she calculated the legal rent for subsequent years of the Tenant's tenancy by applying the Annual Rent Stabilization Allowance for each year to the legal rent for the prior year. Ms. Kerr calculated the legal rent for the Tenant's apartment to be $701.00 (based on the 2.8% Annual Rent Stabilization Allowance) for March 2007 through February 2008, and to be $719.00 (based on the 2.5% Annual Rent Stabilization Allowance) for March 2008 through February 2009, and to be $753.00 (based on the 4.7% rent increase) for March 2009 through February 2010. Exhibit 16. The Annual Rent Stabilization Allowance for July 1, 2009-June 30, 2010, was 0.4%. Exhibit 7. Applying the 0.4% allowance to the 2009 rent results in a lawful monthly rent of $759.00 for March 2010 through February 2011.

The Landlord did not present evidence in the proceeding, but argued that the Tenant failed to prove what the legal rent for her Apartment was because Jean Kerr did not review the rent history for the Apartment since the City enacted rent stabilization in 1981 and, therefore, the 2005 Rent Report may not accurately state the legal rent.

IV. Findings of Fact and Conclusions of Law.

1. The Commission finds that the Tenant entered into a one-year tenancy commencing on March 1, 2006. The Tenant's tenancy converted to a month-to-month tenancy by operation of law on March

1, 2007. The Tenant vacated the Apartment on June 30, 2009.

2. The Commission adopts the legal rents for the Tenant's Apartment calculated by Jean Kerr and set forth in Section III of this Opinion and Order. Those rents are as follows:

Months	Legal Rent
March 2006 - February 2007	$682.00
March 2007 - February 2008	$701.00
March 2008 -February 2009	$719.00
March 2009 - February 2010	$753.00

The Commission finds that Ms. Kerr's reliance on the rent the Landlord reported to the Housing Department in its 2005 Annual Rent Report to establish the base rent for the Apartment was reasonable and proper because, as she testified, the rents reported for the Tenant's Apartment in the 2005 Annual Rent Report appeared to be correct based upon a comparison with the 2004 Annual Rent Report.[2] The Commission further finds that Ms. Kerr's use of the monthly rent for the Apartment that the Landlord reported charging prior to the reported decrease in June 2005 and the application of the Annual Rent Stabilization Allowances from July 1, 2004, through June 30, 2005, and July 1, 2005, through June 30, 2006, was reasonable and proper because, had the Landlord been filing accurate rent reports, the Landlord would have been entitled to withdraw the 2005 rent decrease and implement the two Annual Rent Stabilization Allowances when the Tenant's tenancy commenced. Finally, the Commission finds that Ms. Kerr properly applied subsequent Annual Rent Stabilization Allowances to calculate the lawful rent for the Tenant's Apartment in subsequent years.

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[2] The Commission notes that Ms. Kerr could have looked only to the Landlord's 2006 Annual Rent Report to determine the lawful rent for the Tenant's Apartment. This would have resulted in a lower legal rent because the landlord had failed to record the previous rent decrease and failed accurately to record unimplemented annual rent increases.

The Commission notes that the lawful rent for an apartment in any given year is dependent upon the rent reported by the landlord for the previous years, the current Annual Rent Stabilization Allowance, any unused rent increases documented by the landlord, and whether a tenant has vacated the apartment during the year. The Landlord argues that the Tenant failed to prove the legal rent for her Apartment because the rent it reported in its Annual Rent Reports was inaccurate and because Ms. Kerr did not review the rent history for the Apartment commencing with the enactment of the City's rent stabilization law in 1981 to ensure that every possible annual rent increase was applied to the base rent. However, it was the Landlord's responsibility to implement annual rent increases and document any unimplemented annual rent increases before the landlord could implement the unused rent increases. Sections 6.20.060-6.20.080. The Landlord did not present any evidence that the rents it reported did not reflect permitted increases. Therefore, the Commission finds that the Tenant satisfied her burden of proof as to the legal rents for her Apartment.

3. The Commission finds, based on the assertions of the Tenant, that the Landlord charged the following monthly rents for her Apartment during her tenancy:

Months	**Actual Rent**
March 2006-February 2008	$775.00
March 2008-February 2009	$817.00
March 2009-June 2009	$855.00

4. The Commission finds, based on the assertions of the Tenant and the absence of any evidence to the contrary, that she paid the monthly rent charged by the Landlord during her Tenancy.

5. The Commission holds that the Tenant's claims with respect to illegal rents charged more than three years prior to the fling of her Complaint on January 20, 2010, are barred by the statute of

limitations. Section 6.24.060(B). Accordingly, the Commission finds that the Tenant is entitled to the following rent refunds for February 2007 through June 30, 2009:

Months	**Legal Rent**	**Actual Rent**	**Monthly Difference**	**Overcharge Months x Diff.**
Feb. 2007	682.00	775.00	93.00	93.00
March 2007- Feb. 2008	701.00	775.00	74.00	888.00
March 2008-Feb. 2009	719.00	817.00	98.00	1,176.00
March 2009-June 2009	753.00	855.00	102.00	408.00
	TOTAL RENT REFUND DUE =			$2,565.00

V. ORDER.

Upon consideration of the record in this case, it is this 19th day of April 2010, by the City of Takoma Park Commission on Landlord-Tenant Affairs:

ORDERED, that the Landlord shall pay to the Tenant a refund of $2,565.00 for charging illegal rents; and

ORDERED, that the Landlord shall comply with this order and pay the rent refund to the Tenant by April 30, 2010; and

ORDERED, that if the Landlord does not pay the rent refund awarded to the Tenant by April 30, 2010, the award will accrue interest at the judgment rate of interest under the Courts and Judicial Proceedings Article of the Annotated Code of Maryland; and

ORDERED, that the Landlord shall cease and desist from charging rent in excess of the lawful amount for the Apartment, which, as of the issuance of this Order, is $759.00 per month.

Catherine C. Wakelyn KOA

Catherine C. Wakelyn, Commissioner

Lauren Price KOA

Lauren Price, Commissioner

Peter Munger KOA

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.

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