City of Takoma Park, Maryland

MUNICIPAL BUILDING
7500 MAPLE AVENUE
TAKOMA PARK, MD 20912

CITY OF TAKOMA PARK
COMMISSION ON LANDLORD-TENANT AFFAIRS

Starlington Simms 7807 Lockney Avenue, Apt. #202 Takoma Park, Maryland 20912 Landlord v. Donald Murtie 7807 Lockney Avenue, Apt. #101 Takoma Park, Maryland 20912 Tenant	COLTA Case No. 10-23L

ORDER

I. INTRODUCTION.

On November 9, 2010, Starlington Simms ("Landlord"), the Owner of 7807 Lockney Avenue, Takoma Park, Maryland ("Property"), filed a Complaint with the City of Takoma Park, Commission on Landlord-Tenant Affairs ("Commission") against Donald Murtie ("Tenant"), a tenant in Apartment 101 of the Property ("Apartment"). Exhibit 3. The Landlord's Complaint alleged that the Tenant created a defective tenancy by allowing individuals to live in his Apartment without the knowledge or consent of the Landlord and causing the unit to be overcrowded in violation of County law. The Landlord requested that the Commission declare Mr. Murtie to have caused a defective tenancy and to

award possession of the Apartment. The Tenant filed a Response to the Complaint in which he admitted causing overcrowding in the Apartment in violation of the housing code but claimed that the excess tenants would be vacating the Apartment, asserted that one of the individuals allegedly living in the Apartment was merely a visitor, asserted that the Landlord had condoned the overcrowding of the Apartment for many years, and asserted that the Landlord began monitoring and complaining about the number of residents in Apartment in retaliation for the Tenant's advising a Code Enforcement Officer that the ventilation fan over the stove in the Apartment was blowing the wrong way. The Commission deems the Tenant's Response to constitute a Counter 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 an emergency public hearing on December 7, 2010. The Landlord and the Tenant appeared at the hearing. April Tabor, Esq., represented the Landlord. The Landlord, as the party filing the Complaint, has the burden of proof by a preponderance of the evidence. § 6.24.080(J). The Tenant has the burden of proof regarding his Counter Complaint.

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." Section 6.04.030. A landlord may file a complaint of a defective tenancy with the Commission if the landlord has given the tenant written notice of the defect and the tenant has not rectified the defect or made good faith efforts to do so within one week after giving the notice. Section 6.16.170(B). When the Commission finds that a tenant has caused a defective tenancy, then the Commission is empowered to award the landlord actual monetary damages sustained as a result of the

defective tenancy, require the tenant to correct the defective tenancy, or, if the defective tenancy has resulted in a substantial breach of the lease, authorize the landlord to terminate the lease and repossess the rental unit in accordance with State law. Section 6.24.090(B)(1)(b).

Section 8-208.1, Retaliatory evictions, of the Real Property Article of the *Annotated Code of Maryland*, which is incorporated by reference in section 6.16.180 of the *Takoma Park Code,* prohibits landlords from evicting a tenant for any of the following reasons:

> (1) Solely because the tenant or the tenant's agent has filed a good faith written complaint, or complaints, with the landlord or with any public agency or agencies against the landlord;
>
> (2) Solely because the tenant or the tenant's agent has filed a lawsuit, or lawsuits, against the landlord; or
>
> (3) Solely because the tenant is a member or organizer of any tenants' organization.

III. HEARING AND EVIDENTIARY SUMMARY.

The Tenant moved into the Apartment in approximately 1997. The Tenant testified that when he moved into the Apartment it was occupied by three illegal immigrants and that he was placed on the lease because he was a citizen. However, the Tenant later testified that he had never had a written lease for the Apartment. The Landlord asserted that he gave the Tenant a proposed written lease on October 8, 2010. The Tenant testified that he did not sign the lease and return it to the Landlord because he forgot to do so. The Landlord issued a notice to vacate to the Tenant on November 11, 2010, alleging that the Tenant had violated Chapter 26 of the Montgomery County Code because he had three other individuals living in his Apartment and that he had violated Section 6.16.040(A)[1] of the Takoma Park Code because he continued to allow individuals to live in the Apartment without the Landlord's

[1] The Landlord's Notice to Vacate cited section 6.16.140(A), which governs landlords' entry into tenants' rental units. Presumably, the Landlord intended to cite 6.16.040(A), which requires that tenants comply with the conditions of the lease and the written rules established by the landlord.

authorization. Exhibit 4. The Notice to Vacate specifically noted that a man named Peter had been living in the Apartment since mid-October 2010 and that the landlord had advised the Tenant in writing that Peter was not authorized to live in the Apartment and that it was the third time in the preceding six months that the Tenant had allowed unauthorized individuals to reside in the Apartment. The Notice to Vacate required the Tenant to vacate by December 31, 2010.

The Landlord testified that he became vigilant concerning the individuals residing in the Tenant's Apartment following the Tenant's arrest on drug charges in July 2009, and that the Tenant refuses to comply with the Landlord's demand that only authorized individuals reside in the Apartment. The Landlord testified that he did not evict the Tenant immediately following his arrest because he was concerned about potential retaliation from the Tenant.

In a memorandum dated July 1, 2010, the Landlord advised the Tenant that only three people could live in the Apartment pursuant to the Montgomery County Code, with two people in the large bedroom and one person in the small bedroom in the Apartment. Exhibit 3. The memorandum further advised the Tenant that any additional tenants would be required to complete a rental application. Finally, the memorandum advised the Tenant that his three roommates were not authorized to live in the Apartment and that the Apartment was overcrowded with four individuals.

The Tenant asserted that he has had many different roommates in the Apartment and that the Landlord has always been aware of his roommates and has not been concerned about the roommates. Exhibit 5. The Tenant specifically stated that the Landlord was aware that there were already three people living in the Apartment when he moved into the Apartment in 1997. The Tenant asserted that Peter was merely a visitor and that he had never paid rent, although the Tenant conceded that Peter did not have any other place to live. The Tenant testified that a total of four individuals were living in the

Apartment in June 2010, that Peter moved out at the end of November, and that, at the time of the hearing, there were two individuals, including the tenant, living in the Apartment.

The Tenant testified that he advised a Code Enforcement Officer that the kitchen ventilation fan in the Apartment was reversed and blowing air into the Apartment rather than out of the Apartment during an inspection in June 2010, and that the Landlord had begun harassing him and intimidating him since he made that complaint. He testified that Landlord became hostile in front of the Code Enforcement Officer. He asserted that the Landlord first started insisting that everyone living in the Apartment be on the lease after he made the complaint regarding the vent. Exhibit 5. He testified that the Apartment was always in poor condition and that he was afraid to complain about the Apartment because he did not have a written lease. He testified that the Landlord was reluctant to make any repairs to the Apartment and that the Apartment had not been painted in the thirteen years he had lived there.

The Landlord denied that he had failed to maintain the Apartment and denied that he was not responsive to the Tenant's complaints about the condition of the Apartment.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1. The Commission finds that the Tenant entered into a verbal month-to-month lease in 1997.

2. The Commission finds, based on the documents and testimony presented by the Landlord and the admissions of the Tenant that the Tenant caused a defective tenancy by allowing people to live in his Apartment without the permission of the Landlord and despite the Landlord's express written instructions that the unauthorized tenants move out. The Commission finds that the Tenant's allowing additional tenants to live in the unit without the permission of the Landlord and failing to expel the

additional tenants in defiance of the Landlord's demand constituted a substantial breach of the lease.[2] Accordingly, the Commission shall authorize the Landlord to pursue repossession of the Apartment in the District Court of Maryland for Montgomery County in accordance with the Real Property Article of the *Maryland Code*. The Commission notes that the Landlord is not required to obtain its authorization before filing a court action for repossession of a rental unit and that, in future cases, filing an action District Court without first filing a Commission complaint would be a more direct method of obtaining relief.

3. The Commission holds that the Tenant failed to prove that the Landlord's issuance of the notice to vacate violated section 6.16.180, Retaliatory Practices, of the *Takoma Park Code*. First, the Commission finds that the Tenant failed to present evidence that his complaint to the Code Enforcement Officer during the June 2010 inspection was a written complaint as required by section 6.16.180(a)(1). Second, even assuming that the Tenant made a written complaint, the Commission finds, based on the Landlord's testimony and the reasoning set forth in the Landlord's notice to vacate, that the Landlord issued the notice to vacate because the Tenant allowed unauthorized individuals to reside in the Apartment and failed to make prompt good faith efforts to adhere to the Landlord's demands that he expel the unauthorized individuals.

V. ORDER.

Upon consideration of the complaint, exhibits, and any evidence presented at the hearing in this case, it is this 20th day of December 2010, by the City of Takoma Park Commission on Landlord-

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[2] Although there was no written lease between the Tenant and the Landlord, the Commission finds that the requirement that the Tenant obtain the Landlord's approval of additional residents in the Apartment to be a term of the lease in light of the Landlord's written assertions to the Tenant that he was required to obtain his approval for any additional residents and the absence of any evidence that Tenant refuted the assertions prior to the Landlord's issuance of the notice to vacate.

Tenant Affairs:

ORDERED, that the Landlord is authorized to pursue repossession of the Apartment in the District Court of Maryland for Montgomery County in accordance with the Real Property Article of the *Maryland Code.*

Jarrett K. Smith /LT
Jarrett K. Smith, Presiding Commissioner

Catherine C. Wakelyn /LT
Catherine C. Wakelyn, Commissioner

Lauren Price /LT
Lauren Price, Commissioner

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