City of Takoma Park, Maryland

MUNICIPAL BUILDING
7500 MAPLE AVENUE
TAKOMA PARK, MD 20912

Joanne R. Gordon	)	
	)	
Tenant	)	
	)	
v.	)	Case No. 10-05T
	)	
Starlington Simms	)	
	)	
Landlord	)	

ORDER

I. INTRODUCTION.

On April 1, 2010, Joanne Gordon ("Tenant"), the tenant of 7807 Lockney Avenue, Takoma Park, Maryland ("Property"), Apartment 102 ("Apartment"), filed a Complaint with the City of Takoma Park, Commission on Landlord-Tenant Affairs ("Commission") against Starlington Simms, the owner of the Property ("Landlord"). Exhibit 3. The Tenant's Complaint alleged that the Landlord issued a notice to vacate to her in retaliation for her written request that he paint her Apartment. The Tenant requested that the notice to vacate be rescinded. Exhibit 3. The Landlord filed an Answer to the Complaint in which he asserted that the Tenant had not engaged in any activity for which she is entitled to protection from retaliation, that the tenant had not presented evidence of retaliatory motive, and that he was entitled to issue a no fault notice to vacate.

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 April 13, 2010. The Tenant, the Landlord, and the Landlord's Property Manager, Khary Kelly, appeared at the hearing. April Tabor, 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.

Section 8-208.1 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;
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> (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 on January 1, 2003. The Tenant's initial lease provided for a one-year tenancy with a monthly rent of $675.00. Exhibit 4. The Tenant testified, and the Landlord confirmed, that the Tenant timely paid her rent every month during her tenancy. The Tenant also asserted that she has not violated the lease.

The Tenant sent a letter to the Landlord in September 2009 asking that he paint one of the bedrooms in her Apartment. Exhibit 10. The Tenant sent a letter to the Landlord dated January 6, 2010, stating, "As you indicate a reluctance to repaint my daughter's bedroom in the near term,

I am left with no recourse than to ask that you repaint my entire apartment, except for the living room." Exhibit 7.

The Landlord asserted that, prior to issuing the notice to vacate, it completed the requested painting and made all other repairs requested by the tenant despite the Tenant's uncooperativeness with respect to the scheduling of the painting and repairs[1] and the Tenant's practice of contacting the Code Enforcement Office and Landlord-Tenant Office with complaints about the condition of her Apartment before notifying him. Exhibit 13 and attachments thereto. The Tenant did not refute that the Landlord had completed the painting and all other necessary repairs prior to the issuance of the notice to vacate. The Tenant testified that the Landlord painted her Apartment on January 25, 2010.

The Landlord issued the Tenant a notice to vacate on February 19, 2010, terminating her tenancy effective April 30, 2010. The Landlord testified that he issued the notice to vacate because he wanted the apartment empty.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1. The Commission finds that the Tenants' tenancy in the Property commenced on January 1, 2003, and that it converted to a month-to-month tenancy by operation of law on January 1, 2004.

2. The Commission finds that the Landlord issued the notice to vacate to the Tenant solely in retaliation for the Tenant's January 6, 2010, written request that the Landlord paint her Apartment. The Commission's finding is based upon (1) the proximity between the Tenant's request for painting and the Landlord's issuance of the notice to vacate on February 19 and (2)

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[1] The City Council recently amended section 6.16.140 of the *Takoma Park Code*, which governs landlords' entry of rental units, in Ordinance No. 2010-16. A copy of that ordinance is enclosed with this Opinion and Order for the parties' convenience.

the Landlord's failure to present persuasive evidence of a non retaliatory motive for the termination of the Tenant's tenancy.

The Commission notes that the Landlord, when asked why he issued the notice to vacate, did not have a ready answer and looked to his attorney, who quickly wrote something on a piece of paper, before he posited that he wanted the Tenant's Apartment to be empty. In addition, he did not explain why he wanted the Tenant's Apartment to be empty. Accordingly, the Commission does not find the Landlord's explanation to be credible.

The Landlord argues that the Tenant failed to engage in a protected activity, citing section 8-206(b) of the Real Property Article of the *Maryland Code*. Section 8-206, however, is inapplicable in the City of Takoma Park. As noted above, the *Takoma Park Code* incorporates, by reference, Section 8-208.1of the *Maryland Code*, which provides that a tenant's filing of a good faith written complaint with a landlord is a protected activity. *Md. Code Ann.*, Real Prop. Art., § 8-208.1(a)(1). The Tenant's request that the Landlord paint her Apartment constitutes a complaint about the condition of the Apartment and therefore is a protected activity. The Commission finds that the Tenant made her complaint in good faith because of her uncontested assertion that her Apartment had not been painted since her tenancy commenced on January 1, 2003, the fact that the Takoma Park City Council has made a legislative determination that proper maintenance of rental units requires that they be painted every five years, *Takoma Park Code*, § 6.16.050(F), and the absence of any evidence that the painting was unnecessary.

The Landlord also argues that the fact that it had completed all of the repairs requested by the Tenant at the time it issued the notice to vacate demonstrates that the notice was not retaliatory. However, whether a landlord completes requested repairs is not determinative of whether it issued a notice to vacate in retaliation for the tenant's request for the repairs.

Finally, the Landlord argued that it had a right to require the Tenant to vacate without cause, and that a finding in favor of the Tenant would constitute a finding that "the Landlord's issuance of a no-cause notice to vacate, in and of itself, constitutes retaliatory eviction." We disagree. Although a landlord may issue a no-cause notice to vacate to a month-to-month tenant, the *Code prohibits* landlords from issuing a notice to vacate in retaliation for a tenant's making of a good faith written complaint. When a tenant alleges that a notice to vacate was retaliatory and presents evidence that the notice was issued shortly after the tenant engaged in protected activity, it behooves the landlord to provide a legitimate reason for issuing the notice to vacate to rebut the evidence of retaliation.

In this case, the Tenant has lived in the Apartment for more than seven years. The Landlord conceded that the Tenant had always paid her rent on time. That the Landlord would terminate her tenancy for no reason defies logic. The record hints at possible non retaliatory motives that the Landlord may have had for seeking to terminate the Tenant's tenancy, including the Tenant's alleged uncooperativeness with respect to the scheduling of repairs to her Apartment, the Tenant's alleged practice of complaining to the Landlord-Tenant Office and the Code Enforcement Office before notifying the Landlord of necessary repairs, and the Tenant's alleged repeated clogging of the toilet in her Apartment. However, the landlord did not assert such motives despite the clear opportunity to do so. The Landlord claimed only that he issued the notice to vacate because he wanted the apartment to be empty, a claim that was not credible.

V. ORDER.

Accordingly, it is this 23rd day of April 2010, by the City of Takoma Park Commission on Landlord-Tenant Affairs,

ORDERED that the Notice to Vacate addressed to the Tenant, Joanne Gordon, dated

February 19, is null and void because it is retaliatory in violation of Section 8-208.1 (Retaliatory Evictions) of the Real Property Article of the *Maryland Code*; and

ORDERED that the Landlord, Starlington Simms, shall not evict the Tenant or decrease the services to which the Tenant has been entitled 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.

Dorothy Clennon

Dorothy Clennon, Presiding Commissioner

Jarrett K. Smith, Commissioner

Mary Forrest-Doyle

Mary Forrest-Doyle, 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.