City of Takoma Park, Maryland

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CITY OF TAKOMA PARK
COMMISSION ON LANDLORD-TENANT AFFAIRS

LARA SUPAN 9406 Adelphi Road, #202 Adelphi, MD 20783 Tenant v. MAXINE HILLARY 8119 Sligo Creek Parkway Takoma Park, MD 20912 Landlord/Owner	COLTA Case No. 11-14T

OPINION AND ORDER

I. INTRODUCTION.

On December 19, 2011, Laura Supan ("Tenant"), then a tenant of the basement unit of 8119 Sligo Creek Parkway, Takoma Park, Maryland ("Basement Unit"), filed a Complaint with the City of Takoma Park Commission on Landlord-Tenant Affairs ("COLTA" or "Commission") against the Landlord/Property Owner, Maxine Hillary ("Landlord"). The Landlord lives in the main level of 8119 Sligo Creek Parkway, Takoma Park, Maryland ("Property"), and the Property is a single-family house.

The Tenant's Complaint, filed on December 19, 2011, alleged that the Landlord was not licensed to rent the Property and that the Landlord also breached the lease by disconnecting the

Tenant's Internet service, by turning off sensor lights which illuminated the steps leading to Tenant's entrance to the Basement Unit; and by making the Tenant fear for her safety by allegedly making threatening statements to the Tenant and "violently screaming, yelling, and stomping around" the Landlord's portion of the Property. As relief, the Tenant asked for an immediate termination of the lease and a return of the Tenant's security deposit. The Tenant also sought a return of the rent she had paid during her tenancy and for move-in and move-out expenses, as well as reimbursement of pay she would have earned for her work as a dog walker during the time she missed work to move out of her prior apartment and into the Basement Unit of the Property. *See* Exhibit 3.

On or about January 6, 2012, the Landlord responded to the Tenant's Complaint by denying all allegations. Exhibit 5.

On or about February 14, 2012, the Tenant amended her COLTA Complaint to include punitive (*i.e.*, treble) damages for her security deposit which she alleged had not been returned to her "for over the grace period of 45 days after departing the residence." The amended Complaint sought damages of three times the Tenant's $1,175.00 security deposit or $3,525.00. Exhibit 3A.

The Commission is empowered by section 6.24.020 to adjudicate complaints for violations of Chapter 6.16, Landlord-Tenant Relations, of the *Takoma Park Code*,[1] which includes complaints for breach of lease to the extent the condition in the rental facility constitutes a "defective tenancy," as defined in sections 6.04.030 and 6.16.170. The Commission also has jurisdiction over security deposit complaints, and the provisions of the State of Maryland security deposit law are incorporated by reference in section 6.16.120. The Commission has the power to remedy violations

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[1] Unless otherwise stated, all statutory references are to the *Takoma Park Code*.

of the landlord-tenant law by the general and specific remedies set forth in section 6.24.090.

In accordance with section 6.24.080, the Commission held a public hearing on March 20, 2012. The Tenant was present at the hearing. The Landlord was present and represented by counsel, James A. Shrybman. The Tenant, as the party filing the Complaint, has the burden of proof by a preponderance of the evidence.

II. APPLICABLE LAW.

A. **Defective Tenancy.** A "defective tenancy" is defined by section 6.04.030 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. Before a tenant may file a Commission complaint of a defective tenancy, the tenant must have given the landlord written notice of the defect and the landlord must have failed to rectify the defect or make good faith efforts to do so within one week after notice was given. Section 6.16.170.A. If the Commission finds that a landlord has caused a defective tenancy, then the tenant may be entitled to an award of actual damages or a reasonable amount to be paid by the landlord for the tenant to obtain comparable housing in the area or an order to the landlord to perform other appropriate remedial action. Section 6.24.090.B.

B. **Security Deposits.** Section 8-203 of the Real Property Article of the *Annotated Code of Maryland*, which is incorporated by reference in section 6.16.120, governs security deposits under residential leases. Section 8-203(f) authorizes the withholding of a security deposit for unpaid rent, damage due to breach of lease, and physical damage caused by the tenant in excess of ordinary wear and tear. Section 8-203(e)(1) and (g)(1) requires a landlord, within 45 days of the termination of the tenancy, either to return the security deposit to the tenant or to provide to the tenant with a "written list of damages claimed . . . together with a statement of the cost actually

incurred." If the landlord fails to comply with this requirement, then the landlord forfeits the right to withhold any portion of the security deposit for damages and the tenant has an action of up to threefold of the withheld amount, plus reasonable attorney's fees. However, the provisions of Section 8-203(e)(1) and (4) and (g)(1) and (2) are inapplicable to a tenant who has abandoned the premises prior to the termination of the tenancy unless the tenant has demanded a return of the security deposit by giving written notice, specifying the tenant's new address, by first-class mail to the landlord within 45 days of being evicted or ejected or abandoning the premises. *Md. Code Ann.*, Real Prop. Art., §8-203(h).

III. MOTION TO DISMISS.

As a preliminary matter, the Landlord, through her attorney, moved for the dismissal of the Tenant's Complaint. The grounds cited for dismissal of the Complaint were as follows:

1. The Commission lacks jurisdiction over the subject matter as the Tenant had indicated that she would be withdrawing the Complaint filed on December 19, 2011, and proceeding against the Landlord in small claims court. *See* Exhibit 12. A withdrawn Complaint cannot be amended, as the Tenant attempted to do on or about February 17, 2012 (Exhibit 3A).

2. The City of Takoma Park, Department of Housing and Community Development, Office of Landlord Tenant Affairs ("City Office of Landlord Tenant Affairs"), did not make sufficient efforts to "facilitate resolution" of this dispute between the parties, such as referring the disputing parties to mediation. Section 6.24.060.E.

3. The Tenant's Complaint fails to state a claim upon which relief may be granted.

The Commission denies the Landlord's Motion to Dismiss and for reasons states as follows:

1. The Tenant did not, in fact, withdraw her Complaint and she never followed through with a signed request that her COLTA Complaint be closed. *See* Exhibit 12A.

2. The Commission finds that the City Office of Landlord Tenant Affairs made sufficient efforts to resolve the parties' disputes and facilitate a settlement between the Landlord and the Tenant to satisfy section 6.24.070.E. *See, e.g.,* Exhibits 12A and 12B. The Commission further finds that the relationship between the Landlord and the Tenant appears to have been hostile during the waning days of the tenancy (*see* e-mails attached as Exhibit 8A) and that, under such circumstances, mediation was not appropriate.

3. The Commission finds that the Tenant's Complaint sufficiently states a claim for a violation of the lease (*i.e.*, defective tenancy) and for failure to return the Tenant's security deposit.

IV. EVIDENTIARY AND HEARING SUMMARY.

The Tenant entered into a one-year lease for the Basement Unit of the Property with the Landlord for the term of December 1, 2011, through November 30, 2012. Exhibit 4. The Tenant moved into the Property on or about December 1, 2011, and paid December rent of $1,175.00 and a security deposit of $1,175.00. Exhibit 4. The Tenant also paid $293.75, representing one-fourth of the last month's rent, as provided in the "Security Deposit and Last Month's Rent" paragraph of the Lease. Although the Lease provides for the Tenant to pay one-half of the utilities for the Property, the parties agreed that Tenant had neither been billed for any utilities, nor paid any utilities during her tenancy at the Property.

Almost immediately, there were disagreements between the parties. For example, the Tenant held a party on or about December 3, 2011, and the Landlord asked the Tenant to make sure that her guests did not park in a certain location due to neighbor concerns. The Tenant claimed that the Landlord's action of knocking on her door and coming into her Unit for this purpose was an illegal entry, made without the required 48 hours written notice of intent to enter. *See* section 6.16.140.A.

The Tenant also put a bookshelf by the basement door and the Landlord objected to its placement claiming that it was a fire safety hazard to block an exit door. After various negotiations over compromise solutions (such as putting wheels on the bookshelf), the Tenant accused the Landlord--who had apparently entered the Basement Unit several times to speak with the Tenant about various matters--of invading her privacy and refused to move the bookshelf.

The Tenant also complained that the Landlord had terminated her Internet connection, causing her inconvenience and disrupting the Tenant's ability to conduct her business, which required reliable Internet service. The Landlord testified that she received Internet service through Verizon DSL and used a Netgear wireless router and that the Tenant had also been using the Landlord's wireless router to connect to the Internet. However, in or about mid-December, Landlord testified that her wireless router failed; that she was unable to immediately get a replacement; and that she could only receive Internet service via a modem connected to her land-line phone jack. The Landlord asserted that she had not intentionally disconnected the Tenant's Internet access as the wireless router failure was unexpected and beyond the Landlord's control. The Landlord denied that this was a breach of the lease. (Per the "Utilities" section of the Lease (Exhibit 4), payment of ½ of Internet connection charges is listed as "optional.")

The Tenant also asserted that the Landlord had created an unsafe living environment by intentionally turning off the sensor lights leading to the entrance of the Basement Unit, thereby forcing the Tenant to descend stairs with no light in order to enter her Unit. The Landlord responded that, in addition to the bright sensor lights, which were controlled from inside the sunroom in Landlord's portion of the Property, there were solar lights along the path leading to the back steps and rear lights which went on whenever the front porch light was on. The Landlord also said that she had turned the sensor lights on whenever the Tenant had asked her to do so.

The Tenant's Complaint alleges that the Landlord did not have a valid rental license for the Basement Unit and that the illegal rental of the Property, along with the Landlord's other breaches of the lease, constituted a constructive eviction, entitling her to an immediate termination of the lease, a rent refund, and monetary damages to compensate for her moving expenses and also for the time missed from work to move and deal with "issues" relating to the Landlord's illegal rental of the Basement Unit (*see* Exhibit 6, letter from Marisa Landau, General Manager, DogCentric, Inc.).

The Landlord admitted that the Basement Unit was not licensed for rental use; rather, it was a "Registered Living Unit" with the Montgomery County Department of Housing and Community Affairs which could only be occupied by a relative of the property owner. *See* Exhibit 7. However, the Landlord asserted that the Montgomery County housing inspector had found no unsafe conditions in the house and that neither Montgomery County, nor the City of Takoma Park had ordered that the Basement Unit be immediately vacated. The Landlord said that a citation had been issued to her on January 3, 2012, for "operating a rental facility without first obtaining a proper special exception for an accessory apartment or rental license" (*see* Exhibit 13), but this citation had been dismissed in the District Court of Maryland on February 28, 2012, without payment of a fine or entry of an abatement order. The Landlord testified that an application for a special exception for an accessory apartment at the Property had been filed and that a hearing before the Board of Appeals was set for May 2012. According to the Landlord, the Basement Unit had not been rented since the Tenant moved out and would not be rented until and unless a special exception for an accessory apartment at the Property was granted.

The Tenant said that the Landlord reacted to her requests to fix the Internet and sensor lights by telling her to "knock it off" and related an incident in which the Landlord was "violently screaming, yelling, and stomping around," which caused the Tenant to fear for her personal safety

and the safety of her pets. *See* Exhibit 3 (Summary of Complaint). The Landlord and two witnesses (Charlotte Gavin and Roseanne Walsh) testified that they had dinner together on December 18, 2011. After dinner, the Landlord expressed her frustrations with the Tenant in a raised voice. All three denied any "stomping" and the Tenant was not present in the room.

The Tenant testified that the Landlord's lease violations and safety hazards, such as the lack of light by the back stairs entrance, created an unsafe living situation and that she did not feel safe continuing to live in the Basement Unit. Accordingly, the Tenant stopped living at the Property on December 19, 2012, although she did not physically move all of her furniture and belongings out of the Basement Unit or return the key to the Landlord until December 30, 2011. As part of her damages, the Tenant is claiming a refund of $568.55 for the December 2011, rent she paid for the period after she stopped living at the Property.

The Tenant lived in the Basement Unit for less than one month and she did not give the Landlord one month's written notice prior to the rent due date of her intent to vacate. The Lease states that "Tenant agrees if she should leave before the end of the lease term to pay rent ($1,175.00) for each vacant month until lease would have come to the end of its term November 30, 2012." *See* Exhibit 4.

The Tenant requested a return of her security deposit and gave the Landlord notice of her new address by e-mail on January 4, 2012. *See* Exhibit 8B. There was no evidence in the written record or presented at the hearing that this notice was given to the Landlord by first-class mail.

Both parties testified that they retained legal counsel who made various demands on the other party, but that they were not able to reach agreement. The Commission does not consider or admit evidence of the parties' settlement negotiations.

The Landlord testified that she incurred damages in excess of ordinary wear and tear to the Basement Unit occupied by the Tenant and paid R.E. Stull Contractors $780.00 for the clean-up and repainting of the Basement Unit, including $100.00 to change the locks on the entrance doors which the Landlord testified she would have done anyway. *See* Exhibit 11.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

1. The Commission finds that the Tenant entered into a one-year lease for the Basement Unit with the Landlord, with the Tenant's occupancy commencing on December 1, 2011, and terminating on November 30, 2012. The Commission finds that the Tenant paid rent for December 2011 of $1,175.00 and a security deposit of $1,175.00. The Tenant also paid $293.75 to the Landlord which the Lease states was to be part of the last month's rent. Exhibit 4. The Commission finds that the $293.75 payment of part of the last month's rent in advance was a security deposit, making the Tenant's total security deposit $1,468.75.[2]

2. The Commission does not find that any of the alleged breaches of lease, safety hazards, invasions of privacy, illegal entries, and other unsafe living conditions claimed by the Tenant constituted a defective tenancy or constructive eviction of the tenant or breach of lease justifying a termination of the lease. The Tenant has failed to meet her burden of proof on all issues and the Commission denies any damages to the Tenant.

3. The Commission finds that the Basement Unit at the Property was not licensed as a rental unit or legal accessory apartment, as required by law. However, the Commission also finds

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[2] *Md. Code Ann.*, Real Prop. Art., §8-203(a)(3) states that "'Security deposit' means any payment of money, including payment of the last month's rent in advance of the time it is due, given to a landlord by a tenant in order to protect the landlord against nonpayment of rent, damage due to breach of lease, or damage to the common areas, major appliances, and furnishings."

that the Tenant suffered no actual damages or diminution of rental value resulting from the Landlord's failure to obtain a rental license. No property code violations or unsafe housing conditions were alleged or proved by the Tenant. Absent a showing of actual damages from the failure to license the Basement Unit, the Commission also declines to award the Tenant a restitution of rent paid for the Basement Unit. *See Hallowell v. Citarmanis*, 594 A.2d 591, 88 Md.App. 160 (1991).

4. The Commission finds that the Tenant moved out of the Basement Unit on December 30, 2012, without giving written notice of intent to vacate to the Landlord. The Commission finds that the Tenant abandoned the Basement Unit by the Tenant prior to the termination of the tenancy under the Lease. The Commission finds the Tenant's written demand for return of her security deposit and notice of her new address was delivered to the Landlord by e-mail and not by first-class mail, as required by section 8-203(h)(2) of the Real Property Article of the *Annotated Code of Maryland*. Accordingly, the Commission holds that the Landlord has <u>not</u> forfeited her right to withhold any portion of the Tenant's security deposit.

6. The Commission further finds that the Tenant caused damage to the Basement Unit in excess of ordinary wear and tear and that the Landlord incurred actual costs of $680.00 by R.E. Stull Contractors for repairs to the Basement Unit ($100.00 of the R.E. Stull Contractors' bill, which the Landlord testified was the cost to change the locks on the entrance door, has been disallowed). *See* Exhibit 11. Therefore, the Commission finds that the Landlord may retain $680.00 of the Tenant's security deposit for damages. The Commission finds that the Tenant is entitled to a return of the $788.75 balance of the security deposit for the Basement Unit.

VI. ORDER.

Upon consideration of the Complaint, exhibits, and testimony and evidence presented at the hearing in this case, it is this 2nd day of May, 2012, by the City of Takoma Park Commission on Landlord-Tenant Affairs:

ORDERED, that the Landlord, Maxine Hillary, shall pay the Tenant, Lara Supan, $788.75 as a refund of the Tenant's security deposit.

Catherine C. Wakelyn /LSP
Catherine C. Wakelyn, Presiding Commissioner

Jarrett K. Smith /LSP
Jarrett K. Smith, Commissioner

Lauren Price /LSP
Lauren Price, 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.

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