

# City of Takoma Park, Maryland

Commission on Landlord-Tenant Affairs  
(COLTA)  
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7500 Maple Avenue  
Takoma Park, MD 20912

## CITY OF TAKOMA PARK COMMISSION ON LANDLORD-TENANT AFFAIRS

Normalyn Wright  
709 Hudson Ave., #4  
Takoma Park, MD 20912

Complainant

v.

Hudson Apartments, LLC  
PO Box 3608  
Silver Spring, MD 20918

Respondent

COLTA Case No. 2013-06T

### OPINION AND ORDER

#### I. INTRODUCTION

On May 24, 2013, Normalyn Wright (“Tenant”), the tenant of 709 Hudson Ave., #4, Takoma Park, Maryland (“Apartment”), filed a Complaint with the City of Takoma Park Commission on Landlord-Tenant Affairs (“COLTA” or “Commission”) against Hudson Apartments, LLC (“Landlord”), the owner of the apartment building located at 709 Hudson Ave. (“Property”). This Complaint was docketed as COLTA Case No. 2013-06T.

The Tenant’s Complaint alleged that the Landlord issued a notice to vacate on April 23, 2013, in retaliation for her complaints to the Landlord about alleged defects in her Apartment. The

Tenant's Complaint also alleged that the Landlord's failure to offer her a new lease when it purchased the Property in January 2012 constituted a violation of section 6.16.070 of the *Takoma Park Code*. The Tenant requested that the Commission require the Landlord to withdraw the notice to vacate.

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 June 18, 2013. The Tenant and the Landlord's property manager, Alain Francis Mouassami, were present at the hearing. Deborah Lopez, another tenant at the Property, testified as a witness. 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

### a. Retaliation

Section 8-208.1 of the Real Property Article of the *Annotated Code of Maryland*, which is incorporated, as amended, by reference in section 6.16.180 of the *Takoma Park Code*, prohibits landlords from terminating a periodic tenancy<sup>1</sup> 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

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<sup>1</sup>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).

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.

b. Lease renewal.

Section 6.16.070 of the *Takoma Park Code*, which governs residential lease renewal requirements provides as follows:

D. The landlord shall offer the tenant the opportunity to renew a lease of one-year or more for an additional term of one year at least 2 months prior to the end of each lease term unless:

1. The landlord has given the tenant notice to vacate, except that the landlord shall not give a 2-month no fault notice to vacate at the expiration of the initial one-year lease term; or
2. The tenant has given the landlord notice of intent to vacate; or
3. At least 2 months before the end of the lease term, the landlord has provided the tenant with a written statement of the landlord's reasonable cause for offering a lease term of less than one year.

E. If a landlord fails to offer the tenant a one-year lease renewal without stating in writing the landlord's reasonable cause for offering a term of less than one year, as required by subsections (C) or (D)(3) of this section, then, at the sole option of the tenant, the tenant shall be presumed to have a one-year lease.

### III. EVIDENTIARY AND HEARING SUMMARY

The Tenant entered into a one-year lease for the Apartment commencing on August 1, 2006.

R. at 7. The Tenant asserted that the Landlord purchased the Property in January 2012, and that she met with the Landlord's property manager, Alain Francis Mouassami soon after the purchase and discussed the fact that she did not have a current lease, but Mr. Mouassami did not offer her a one-year lease. R. at 5. The Landlord issued a notice to vacate dated April 23, 2013, terminating the Tenant's tenancy effective July 31, 2013.

The Tenant alleged that she made several complaints to the previous management of the Property and to Mr. Mouassami. R. at 5. She asserted that she complained about problems with the heat for her Apartment in September 2012 and from November 2 through December 5, 2012, when the heating system at the Property did not work. She asserted that she complained about roach infestation, water damage in her bedroom, rust around her bathroom radiator and bathtub drain, unclean common areas, exterior rat infestation, and garbage in the front and back yards of the Property, although she did not indicate when she made these complaints to the Landlord. R. at 5.

The Tenant complained to the Landlord about a problem with her toilet via text message on May 15, 2013. R. at 26 and 38. In an email dated June 4, 2013, the Tenant complained to the Landlord about the rust around the bathroom radiator and bathtub drain, inoperable windows in the kitchen and living room, and a leak under her sink and corresponding damage. R. at 40.

The Tenant submitted copies of text messages between her and the Landlord that documented that she corresponded about the lack of heat in her Apartment in November 2012, giving the Landlord permission to enter her apartment to repair the heat and notifying the Landlord of the status of the heat in her Apartment, R. at 36-37, and about her broken toilet in May 2013, R. 38, but do not include any other complaints. R. at 36-39.

The Tenant also submitted documentation that indicated that the Landlord had accused her of paying her November 2012 rent late, charged her a late fee, and threatened to evict her, but then refunded the late fee. R. at 28-30. The Tenant asserted that the Landlord's conduct demonstrated that the Landlord wanted to retaliate against her for complaining about the broken heating system.

Deborah Lopez, a tenant of Apartment # 3 of the Property, testified that the Landlord also gave her a notice to vacate dated April 23, 2013. Her apartment and the Tenant's Apartment were

the only units on the first floor of the Property. She testified that she had filed a complaint about the Property's lack of heat in November 2012 and also had made other complaints to the Landlord about the condition of the Property. She testified that the Landlord, in response to her complaints, told her she could move out of the Property if she did not like it and offered to excuse her from the remainder of her lease. She also testified that the Landlord later withdrew the notice to vacate because the Landlord failed to provide her with timely notice of its intent to terminate her one-year lease and provide notice of its reason for not offering to renew her lease for an additional one-year term. She testified that the Landlord never said anything to her about her complaints about the broken heating system. Ms. Lopez testified that the Landlord had the exterminator fill holes under the sink in her apartment, and the Tenant testified that the Landlord would not fill the holes under her sink because he was retaliating against her for making complaints.

Mr. Mouassami testified that the Landlord issued the notice to vacate to the Tenant because the owner of the Property wanted to let Mr. Mouassami's daughters move into the first floor units. The Tenant asserted that there were three vacant units in the Property when the Landlord purchased it, and that he could have let the daughters move into the vacant units. Mr. Mouassami testified that his daughters had just moved to the United States and did not speak any English when the Landlord bought the Property, so they needed a year to learn English before moving into their own Apartments. He testified that his daughters attend Strayer University in Takoma Park and live with him in Olney, Maryland, which gives them a long commute to school, so he and the Landlord wanted to provide them with a more convenient place to live.

Mr. Mouassami asserted that he did not know who had filed a complaint about the heat with the City of Takoma Park. R. at 21. He asserted that he understood why tenants would complain about the lack of heat, that he received complaints from all of the tenants about the lack of heat, and

that he would not retaliate against them for making a complaint. R. at 21. In response, the Tenant asserted that the Landlord knew that Ms. Lopez had filed a complaint with the City about the heat. R. at 26.

Mr. Mouassimi testified that the Property was in very poor condition when the Landlord purchased it. He submitted several emails from the tenant of Apartment # 6 wherein that tenant complained about various conditions in the Property over a course of several months. Mr. Mouassimi testified that the Landlord had not attempted to evict that tenant, which he argued demonstrated that the Landlord did not retaliate against tenants who complain. As a rebuttal, the Tenant testified that the tenants of Apartment # 6 were related to the previous owner of the Property.

#### **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 August 1, 2006, and that her tenancy converted to a month-to-month tenancy by operation of law on August 1, 2007.

2. The Commission finds that the Landlord did not violate section 6.16.070 when it did not offer the Tenant a one year lease following its purchase of the Property in January 2012. Section 6.16.070(D) requires that landlords offer tenants with a one-year lease the opportunity to renew their lease for an additional year prior to the expiration of their lease. When a landlord fails to offer a one-year lease renewal, the tenant may elect to renew the lease for a one-year term. Section 6.16.070(E). In this case, the Tenant's one-year lease expired in 2007, and she was a month-to-month tenant at the time the Landlord purchased the Property. Accordingly, the Landlord did not have a duty to offer a one-year lease renewal to the Tenant.

3. The Commission finds that the Tenant failed to prove by a preponderance of the evidence that the Landlord issued the April 23, 2013, notice to vacate in retaliation for the Tenant's

complaints about the condition of the Property. First, the only evidence of the Tenant's having made complaints to the Landlord prior to the issuance of the notice to vacate related to the lack of heat in September and November 2012. The Tenant's September 2012 complaint about the heat occurred more than six months before the Landlord issued the notice to vacate. Therefore, the notice to vacate may not be deemed retaliation for the September complaint as a matter of law. *Md. Code Ann.*, Real Prop. Art., § 8-208.1. Regarding the November 2012 complaints, the Tenant first stated that Mr. Mouassimi asked her who complained to the City about the lack of heat and then stated that she told him that Ms. Lopez had made the complaint to the City. R. at 26. The only other complaints by the Tenant for which there is any evidence of the dates of the complaints were her complaint about a broken toilet on May 15, 2013, R. at 26 and 38, and her complaints about rust around the bathroom radiator and bathtub drain, inoperable windows in the kitchen and living room, and a leak under her sink on June 4, 2013, R. at 40, after the Landlord issued the notice to vacate.

In contrast, the Landlord presented copies of emails from the tenant in Apartment #6 complaining about various problems with his unit, but the Landlord has not issued a notice to vacate to that tenant.

In addition, the Landlord presented evidence of a legitimate, nonretaliatory reason for terminating the Tenant's tenancy—the desire to allow Mr. Mouassimi's daughters to live in the two first-floor units. Although the Tenant asserted, and Mr. Mouassimi conceded, that there were vacant apartments available for his daughters at the time the Landlord purchased the property, any doubt about the veracity of the explanation is insufficient to overcome the lack of evidence of retaliatory intent.

**VI. ORDER.**

Upon consideration of the complaint, exhibits, and evidence presented at the hearing in this case, it is this 8<sup>th</sup> day of July 2013, by the City of Takoma Park Commission on Landlord-Tenant Affairs:

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

  
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Dorothy Clennon, Presiding Commissioner

  
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Catherine Wakelyn, Commissioner

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Juan Jose Canales, 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.