

**BEFORE THE  
COMMISSION ON LANDLORD-TENANT AFFAIRS  
ON MONTGOMERY COUNTY, MARYLAND**

In the Matter of  Shirley and Roland Israel  <b>Complainants</b>	
v.  Fay Fan Lee  <b>Rental Facility:</b> 14120 Canterbury Lane, Rockville, MD 20853 (Rental License #002456)  <b>Respondent</b>	<b>Case No. 9936</b>

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**DECISION AND ORDER**

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland (the "Commission"), pursuant to Sections 29-14A, 29-38 and 29-40 of the Montgomery County Code 1994, as amended ("County Code"), and the Commission having considered the testimony and evidence of record, it is, therefore, this 8<sup>th</sup> day of June, 2000, found, determined and ordered, as follows:

**BACKGROUND**

On August 24, 1999, Shirley and Roland Israel (the "Complainants"), former tenants at 14120 Canterbury Lane, Rockville, Maryland (the "Property"), a

licensed single family rental facility in Montgomery County, Maryland, filed a formal complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs (the "Department"), in which they alleged that Fay Fan Lee (the "Respondent"), owner of the Property, failed to mitigate damages resulting from their premature termination of lease, in violation of Section 8-207(a)(3) of the Real Property Article, Annotated Code of Maryland, 1996, as amended ("State Code").

Specifically, the Complainants assert that: (1) on May 27, 1999, they issued the Respondent a notice of their intention to vacate the Property on July 31, 1999, two (2) months prior to the expiration of the lease, because they were buying a house; (2) the Respondent acknowledged receipt of their notice to vacate and informed them of his intention to hold them liable for rent through the end of the lease term, September 30, 1999; and (3) they found potential tenants who were willing to move in by August 1, 1999, which would have released them from their obligation to pay rent for the final two months of their lease, but the landlord refused and decided to sell the property instead.

The Respondent contends that the Complainants: (1) breached the lease and prematurely vacated the Property because they were buying a house; (2) are liable for rent through the end of the lease term, September 30, 1999; and (3) failed to pay rent for the last two (2) months of the lease, and therefore, he withheld their security deposit which was the equivalent of (2) months rent.

The Complainants are seeking an Order from the Commission for the Respondent to refund \$2,200.00, the equivalent of (2) months rent, based on his failure to mitigate damages caused by their breach of lease and abandonment of the Property prior to the end of term.

After determining that the complaint was not susceptible to conciliation, the Department duly referred this case to the Commission for its review, and on April 4, 2000, the Commission voted to accept jurisdiction and scheduled a public hearing for May 11, 2000.

The public hearing in the matter of Shirley and Roland Israel v. Fay Fan Lee, relative to Case No. 9936, commenced on May 11, 2000, and ended on that date. The record reflects that the parties were given proper and adequate notice of the hearing date and time. Present at the hearing and offering testimony and evidence were the Complainants, Shirley and Roland Israel, the Respondent, Fay Fan Lee, and Jim Figliozzi, a friend of the Respondent who was present to assist the Respondent in presenting his case.

**Without objection, the Commission entered into the record of the hearing the case file compiled by the Department, identified as Commission's Exhibit No. 1.**

### **FINDINGS OF FACT**

**Based on the testimony and evidence of record, the Commission makes the following findings of fact:**

- 1. On September 19, 1998, the Complainants and the Respondent entered into a one-year lease agreement (the "Lease") for the rental of the Property, which commenced October 1, 1998, and was due to expire on September 30, 1999 (See pages 9 to 17 of Commission's Exhibit No. 1).**
- 2. At the time they signed the Lease, the Complainants paid the Respondent a security deposit of \$2,200.00, which sum represents the equivalent of two (2) months' rent, which is receipted at Paragraph 26, "Security Deposit," of the Lease.**
- 3. On May 27, 1999, the Complainants issued the Respondent a notice of their intent to vacate the Property on July 31, 1999, two (2) months prior to the expiration of the Lease, because they were buying a house.**
- 4. On June 1, 1999, the Respondent sent the Complainants a letter that acknowledged receipt of their notice to vacate and which informed them of his intention to hold them liable for rent through the end of the Lease, September 30, 1999. The letter further stated, "If we are able to prepare and re-rent the property to a suitable tenant before that date, we may [be] able to apply a credit for some of the rent due."**
- 5. On or about June 11, 1999, the Respondent advertised the Property "for sale" in the Washington Post newspaper. (See page 23 of Commission's Exhibit No. 1).**
- 6. On July 21, 1999, the Complainants sent the Respondent a letter (See pages 4 and 5 of Commission's Exhibit No. 1) in which they stated, in pertinent part: (a) they had located someone interested in renting the Property for one year beginning August 1, 1999, after which that person would then purchase the Property; (b) their real estate agent, Patti Wetzel, had informed them of the Respondent's decision not to offer the Property for rent with an option to buy; and (c) based on that decision, they ran an advertisement in The Gazette newspaper that the Property was, "for sale and financing by owner."**

**7. Although Complainant Ronald Israel testified at the hearing that his wife, Complainant Shirley Israel, placed an advertisement in The Gazette newspaper for three weeks beginning July 7, 1999, advertising the Property "to be rented out," they failed to present any probative evidence, such as a copy of the ad or a paid receipt for placement of the advertisement. Furthermore, the Complainants' testimony is contradicted by the Complainants' written statement in the July 21<sup>st</sup> letter cited above, which states the advertisement read, "for sale and financing by owner."**

**8. The Complainants also testified that they kept a list of all those persons who responded to The Gazette newspaper advertisement, and provided a copy of such a list with 34 names and telephone numbers as part of their complaint. (See page 34 of Commission's Exhibit No. 1).**

**9. On July 21, 1999, the Complainants sent the Respondent a second letter (See page 6 of Commission's Exhibit No. 1) in which they requested a final walkthrough inspection of the Property at 6:00 PM on July 31, 1999. The Commission credits the undisputed testimony of Complainant Roland Israel that such an inspection occurred, and finds that the Property was not damaged in excess of ordinary wear and tear as a result of the Complainants' tenancy.**

**10. On July 28, 1999, the Complainants sent the Respondent a letter (See page 7 of Commission's Exhibit No. 1) again requesting a final walkthrough inspection of the Property at 6:00 PM on July 31, 1999, and also stating, "Please send our security deposit to our new home address: 17338 Blossom View Drive, Olney, MD 20832."**

**11. On July 29, 1999, the Respondent sent the Complainants a letter acknowledging receipt of the two letters dated July 21, 1999, in which he stated, "As you must be aware, I was under no agreement or obligation to accept any possible tenant and or prospective purchaser that you or anyone else may have produced. Our lease agreement is a legal agreement and you are obligated to that agreement until it expires in September and are responsible for all terms and conditions of that lease agreement. I respectfully disagree with your opinion of not being liable for August & September rent, and will expect payments as per our lease agreement." (See page 8 of Commission's Exhibit No. 1).**

**12. The Complainants abandoned the Property as of July 31, 1999, two months prior to the expiration of the Lease, and did not pay rent to the Respondent, in the amount of \$1,100.00 a month, for the months of August and September 1999.**

**13. On September 1, 1999, the Respondent ran an advertisement in the Gazette Newspaper (See page 24 of Commission's Exhibit No. 1) advertising the Property for "sale or lease."**

**14. The Property was not re-rented or sold by the Respondent prior to September 30, 1999 (See pages 54 and 55 of Commission's Exhibit No. 1).**

**15. The Respondent applied the Complainants' \$2,200.00 security deposit to unpaid rent for the months of August and September 1999, which sum was \$2,200.00.**

### **CONCLUSIONS OF LAW**

**1. The Complainants, without a reasonable cause beyond their control, breached the Lease with the Respondent and abandoned the Property prior to the termination date of September 30, 1999. Based on the Complainants' abandonment of the Property, pursuant to § 8-203(i)(1) and (2) of the State Code, the Respondent had no obligation to notify them of the disposition of their security deposit plus accrued interest unless they demanded return of their deposit within forty-five (45) days of abandoning the Property, which they did not. The Commission finds that the Complainants' July 28, 1999 letter to the Respondent (See Findings of Fact at No. 10 above) was informational only, and not a demand for return of the security deposit. The Complainants were in possession of the Property on July 28, 1999, and only expressed an intent to abandon in the future. No demand for the return of their security deposit was made pursuant to the provisions of § 8-203(i)(2) of the State Code which requires that such demand be made within forty-five (45) days after the premises have been abandoned. Accordingly, the Commission concludes that the Complainants are not entitled to a return of the security deposit pursuant to the provisions of § 8-203 of the State Code.**

**2. Pursuant to § 8-207(a)(3) of the State Code, the Respondent had an obligation to mitigate the damages caused by the Complainants' premature termination of tenancy, breach of Lease and abandonment of the Property. Mitigation of damages required that the Respondent "use due diligence to obtain a new tenant," and "the listing of the property for sale did not satisfy the duty to mitigate damages, but the listing of the property for sale or rent and later for rent did satisfy that duty," Wilson v. Ruhl, 277 Md. 607, 356 A.2d 544 (1976).**

3. Therefore, based on the above, the Commission finds that during the month of August 1999 when the Property was advertised "for sale" only, the Respondent failed to properly mitigate the damages caused by the Complainants' abandonment of the Property and "termination of occupancy before the end of the term," and therefore, the Complainants do not owe rent, in the amount of \$1,100.00, to the Respondent for the month of August 1999. However, the Commission finds that the Respondent did satisfy his obligation to mitigate damages when he advertised the Property "for sale or lease," during the month of September 1999, and therefore, the Complainants owe rent, in the amount of \$1,100.00, to the Respondent for the month of September 1999.

4. The Respondent caused a defective tenancy by failing to properly mitigate damages caused by the Complainants' abandonment of the Property and termination of occupancy before the end of the term, in violation of § 8-207, "Duty of aggrieved party to mitigate damages on breach of lease," of the State Code.

### **ORDER**

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders the Respondent to pay the Complainants \$1,100.00, which sum represents the refund of August 1999 rent.

The foregoing decision was concurred in unanimously by Commissioner Cynthia Morgan, Commissioner Greg Smith, and Commissioner Jonathan Smith, Panel Chairperson.

To comply with this Order, Respondent Fay Fan Lee must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within fifteen (15) calendar days of the date of this Decision and Order, a check payable to Roland and Shirley Israel in the full amount of \$1,100.00.

The Respondent is hereby notified that Section 29-44 of the County Code declares that failure to comply with this Decision and Order is punishable by a \$500.00 civil fine Class A violation as set forth in Section 1-19 of the County Code. This civil fine may, at the discretion of the Commission, be imposed on a daily basis until there is compliance with this Order.

In addition to the issuance of a \$500.00 civil fine Class A violation, should the Commission determine that Respondent, Fay Fan Lee, has not, within fifteen (15) calendar days of the date of this Decision and Order, made a *bona fide* effort to

**comply with the terms of this Decision and Order, it may also refer the matter to the Office of the County Attorney for additional legal enforcement.**

**Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland within thirty (30) days from the date of this Decision and Order, pursuant to the Maryland Rules governing administrative appeals.**

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**Jonathan Smith, Panel Chair**

**Commission on Landlord-Tenant Affairs**