

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

In the matter of:	*	
	*	
Kiichi and Ekanem Take	*	
	*	
Complainants	*	
	*	
V.	*	Case No. 25995
	*	
Stellar GT TIC, LLC and VFF TIC, LLC,	*	
Robert Rosania, President	*	
	*	
Respondent	*	

Rental Facility: Georgian Towers Apartments (Rental Facility License No. 17412)

- [Decision](#)
- [Background](#)
- [Findings of Fact](#)
- [Conclusions of Law](#)
- [Order](#)

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 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended, and the Commission having considered all of the evidence, it is therefore, this 13th day of October, 2005, found, determined, and ordered, as follows:

BACKGROUND

On December 23, 2004, Kiichi and Ekanem Take ("Complainants"), current tenants at 8750 Georgia Avenue, Apartment 314B, Silver Spring ("Apartment"), a rental dwelling unit at Georgian Towers Apartments ("Georgian Towers"), filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs ("Department"), in which they alleged that the owners of the Property, Stellar GT TIC, LLC and VFF TIC, LLC, Robert Rosania, President ("Respondents"), and their Management Agent, Borger Management, Inc., G. Thomas Borger, President ("Borger Management"), and their employees: (1) were negligent when conducting a plumbing repair in the Apartment and broke a water pipe which resulted in water damage to their personal property, and (2) have refused to pay them fair compensation for the repair, restoration and/or loss of that personal property.

Respondents and Borger Management, who at no time have denied that the water pipe burst in the Complainants' Apartment during a repair being made by their employee, have offered the Complainants one-month's rent (\$1,085.00) as compensation for the inconvenience caused by the broken water pipe, which Respondents consider to be fair and reasonable.

The Complainants are seeking an Order from the Commission for the Respondents to pay them \$5,360.00, which sum represents the actual costs they incurred to repair or restore their water damaged personal property, and the depreciated value of other water damaged items.

The public hearing in the matter of Kiichi and Ekanem Take v. Stellar GT TIC, LLC and VFF TIC, LLC, Robert Rosania, President, relative to Case No. 25995, commenced on September 13, 2005, and concluded on that date. Present at the hearing and presenting testimony and evidence were Complainants Kiichi and Ekanem Take. Respondents, Stellar GT TIC, LLC and VFF TIC, LLC, Robert Rosania, President, failed to appear, and were not represented by an attorney at the hearing. Also present at the beginning of the hearing were two witnesses summoned by the Commission, Respondents' Management Agent, G. Thomas Borger, President, Borger Management, Inc., and his employee, Kale Davis, Community Manager of Georgian Towers Apartments.

The record reflects that the Complainants and the Respondents were given proper notice of the hearing date and time. The Respondents were served with a Summons, Statement of Charges and Notice of Hearing by certified mail at the address listed in the Department's licensing records, at 156 William Street, 10th Floor, New York, New York 10038, and by certified mail delivered to Respondents' legal agent for service of process in the State of Maryland, Kerry Strubin, Legal Agent, National Registered Agents, Inc. of Maryland, 11 E. Chase Street, Baltimore, Maryland 21202. Respondents did not file a response to the allegations raised in the subject complaint, nor did they request a continuance in writing as directed in the Summons, Statement of Charges and Notice of Hearing.

After the witnesses were sworn, the Commission advised Mr. Borger that because he is not an attorney licensed in the State of Maryland he could not represent the Respondents at the hearing, nor was he permitted to request a continuance of the hearing to a later date. Mr. Borger was further advised that he and Ms. Davis were summoned to testify at the hearing only as witnesses regarding the allegations raised in the complaint. Mr. Borger then stated that he and Ms. Davis were "leaving the proceedings because we have been misinformed as to our ability to represent ourselves at the hearing, and we have followed the issues of the Summons and have been told we can only testify as a witness and not on our own behalf, and that is unacceptable," at which time they left the hearing. The Commission proceeded with the hearing in the absence of the Respondents and Respondents' Management Agent, G. Thomas Borger, President, Borger Management, Inc., and employee, Kale Davis, Community Manager of Georgian Towers Apartments.

The Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1, and the Georgian Towers "Rental Agreement" dated October 14, 2004, identified as Commission's Exhibit No. 2. The Commission also accepted into evidence the following exhibits offered by the Complainants: (1) a copy of a

statement signed by Gina Ayoa, dated September 12, 2005, identified as Complainants' Exhibit No. 1; (2) a copy of a floor plan of apartments in Georgian Towers, identified as Complainants' Exhibit No. 2; (3) a copy of the front and reverse side of a maintenance door tag, identified as Complainants' Exhibit No. 3; and, (4) a copy of the front and reverse side of another maintenance door tag, identified as Complainants' Exhibit No. 4.

Furthermore, the Commission extended the time period within which it would decide this matter pursuant to Section 7.1 of Appendix L, "Regulations on Commission on Landlord-Tenant Affairs," of the County Code.

FINDINGS OF FACT

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

1. On July 10, 2004, Complainant Ekanem Take (then known as Ekanem K. Williams) entered into a one-year and 21 day lease agreement (the "Lease") with Borger Management for the rental of 8750 Georgia Avenue, Apartment #314B, Silver Spring, MD, which commenced on July 10, 2004, and expired on July 31, 2005. The monthly rent was \$1,085.00.

2. Paragraph 15 of the Lease, entitled "Condition of Premises," states that the Apartment was delivered to the Complainants at the commencement of the tenancy, "in a clean, habitable, and sanitary condition, free of rodents and vermin, and in complete compliance with all applicable law." Paragraph 16 of the Lease, entitled "Damages To Premises," subparagraph (c), "Landlord caused," states, "Landlord shall be under no liability to Tenant due to any damages to or inconvenience experienced by Tenant of whatever nature, unless caused by the negligent acts of Landlord or Landlord's violation of any law, in which case Tenant shall be reimbursed for damages so sustained." (Emphasis added).

3. The Commission credits the testimony of the Complainants that within days of moving into the Apartment, they noticed that the bathroom sink drain pipe was leaking, and they verbally reported this problem to Borger Management.

4. The Commission finds that in response to Complainants' notification regarding a leaking water pipe, on July 19, 2004, an employee of Borger Management, while attempting to repair the leaking pipe, broke the pipe which caused a flood in the Apartment, which constitutes a negligent act by Borger Management, acting as agent for the Respondents. The Commission further finds that Borger Management's employee had a duty to protect the Complainants' personal property while making the repair and failed to do so which directly caused damage to, and the loss of, their personal property.

5. On the evening of July 19, 2004, the Complainants returned home to the Apartment to find a maintenance ticket from Borger Management tagged to their front door which states: "Pipe broken under bath sink - Removed water from floor. 07.19.04 5pm." The Commission credits the testimony of the Complainants that upon entering the Apartment, they

found the floor completely covered with water, and observed that water had seeped into their personal possessions, many of which were still in cardboard boxes, and into an oil painting which was also sitting on the floor.

6. The Commission finds that contrary to the statement on the work order tag left on the Apartment door by Borger Management's employee on July 19, 2004, the water was not completely removed from the floors of the Apartment. This finding is supported by both the credible testimony of the Complainants and the photographs contained in Commission's Exhibit No. 1, which accurately depict the condition of the Apartment on July 19, 2005.

7. The Complainants reported the flood and water damage to Borger Management on the following day, July 20, 2004. In response, on the same date Borger Management's employee, Assistant Community Manager, Carolyn McDavid, conducted an inspection of the Apartment with Complainant Ekanem Take to determine the extent of the damage, and advised Ms. Take to compile a list of damaged personal items and submit it to Borger Management for reimbursement.

8. By a letter dated August 16, 2004, Complainant Ekanem Take submitted to Ms. McDavid a detailed list of personal property damaged or destroyed by the flood, valued by Ms. Take to be approximately \$7,000.00. Ms. Take advised Ms. McDavid that, "I hope that with this inventory of damaged items Georgian Towers will take full responsibility and take appropriate measures to compensate me accordingly."

9. By a letter dated August 27, 2004, Ms. McDavid advised Complainant Ekanem Take that her claim for reimbursement had been denied, and stated, "We realize that you were inconvenienced by the water, and offer you a rent concession for the month of September."

10. By a letter dated September 14, 2004, Complainant Ekanem Take rejected Borger Management's rent concession offer.

11. On October 14, 2004, the Complainants and Borger Management's Kale Davis, Community Manager of Georgian Towers, executed an addendum to the Lease (See Commission's Exhibit No. 2), which added Complainant Kiichi Take to the Lease.

12. At the request of the Department, in April, 2005, the Complainants submitted a revised, detailed list of personal property damaged or destroyed by the flood, in the amount of \$5,360.00, that took into account the depreciated value of certain items, and included an appraisal of the damaged oil painting, the largest single item of damage, by an expert art appraiser (See pages 28 to 38 of Commission's Exhibit No. 1). The Commission finds that the revised list of damages and depreciated values, together with the expert art appraisal, to be an accurate and reasonable reflection of the damages, losses, and costs incurred by the Complainants as a result of the broken pipe and flooding in the Apartment on July 19, 2004, caused by the negligence of Respondents' agent.

CONCLUSIONS OF LAW

Accordingly, based upon a fair consideration of all the evidence the Commission on Landlord-Tenant Affairs concludes:

1. Pursuant to Section 29-27(m), "Contents of lease," of the County Code, Respondents had an obligation to deliver the Apartment to the Complainants at the commencement of their tenancy, "in a clean, habitable and sanitary condition . and in complete compliance with all applicable laws." The Commission finds that at the time the Complainants took possession of the Apartment, on or about July 10, 2004, there was a defective and leaking water pipe under the bathroom sink, which constitutes a violation of Section 29-27(m) of the County Code.

2. The Complainants reported the leaking pipe to the Respondents' agent, Borger Management, during the first week of their tenancy, as required by Paragraph 16, "Damages to Premises," subparagraph (a) "Duty to Report," of the Lease.

3. Section 29-27(b), "Contents of lease," of the County Code, states that each lease for rental housing located in the County must, "Contain no waiver of the landlord's liability for damage caused by the landlord's negligence or violation of any applicable laws, and provide for reimbursement to the tenant for any damage sustained by the tenant due to the negligence of the landlord." Based on Commission finding that Borger Management's employee was negligent in causing the flood in the Complainants' Apartment on July 19, 2004, pursuant to Section 29-27(b) of the County Code and Paragraph 16 of the Lease, the Respondents have caused a defective tenancy and are liable to the Complainants for the actual damages or loss sustained by the Complainants as a result of the Respondents' negligence.

4. The Complainants sustained actual damage or loss in the amount of \$5,360.00 as the direct result of the Respondents' negligence related to the broken water pipe in the Apartment on July 19, 2004.

5. Pursuant to Section 29-47(b)(5) of the County Code, "An award of damages sustained by the tenant as a result of the defective tenancy, limited to actual damage or loss incurred by the tenant. The award must not exceed \$2,500 per affected dwelling unit." Therefore, although the Respondents are liable to the Complainants in the amount of \$5,360.00, the Commission is limited to an award of \$2,500.00.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders the following:

1. Respondents must pay the Complainants **\$2,500.00**, which sum represents a portion of the actual damage or loss they sustained as a result of the Respondents' negligence; and,

2. Complainants retain their rights to pursue the Respondents for the balance due them for the damages and losses they sustained as the result of the Respondents' negligence, which sum is \$2,860.00, through appropriate civil proceedings.

Commissioner Martha McClelland, Commissioner Suzanne Glazer, and Commissioner Jay Krampf, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondents, Stellar GT TIC, LLC and VFF TIC, LLC, Robert Rosania, President, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order, a check made payable to Ekanem and Take Kiichi for the amount of \$2,500.00.

The Respondents, Stellar GT TIC, LLC and VFF TIC, LLC, Robert Rosania, President, are hereby notified that Section 29-48 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 Decision and Order. In addition to the issuance of a \$500.00 civil fine Class A violation, should the Commission determine that the Respondents have not, within thirty (30) 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 this 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. Be advised that pursuant to Section 29-49 of the County Code, should the Respondents choose to appeal the Commission's Order, they must post a bond with the Circuit Court in the amount of the award (\$2,500.00) if they seek a stay of enforcement of this Order.

Jay Krampf, Panel Chairperson
Commission on Landlord-Tenant Affairs