BEFORE THE

COMMISSION ON LANDLORD TENANT AFFAIRS

FOR MONTGOMERY COUNTY, MARYLAND

In the Matter of Estelle Terese Odom **Complainant**	
v.	***Case No.*** **10126**
Brenda Morris Rental Facility: 11412 Cherry Hill Road, #202, Beltsville, Maryland (Unlicensed Rental Unit) **Respondents**	

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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, this 15th day of March, 2001, found, determined and ordered, as follows:

BACKGROUND

On November 18, 1999, Estelle Terese Odom (the "Complainant"), former tenant at 11412 Cherry Hill Road, #202, Beltsville, Maryland (the "Condominium"), an unlicensed condominium rental unit 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 she alleged that within forty-five (45) days after the termination of her tenancy, Brenda Morris (the "Respondent"), owner of the Condominium, failed to refund her

$260.00 security deposit plus accrued interest, in violation of § 8-203(f)(1) of the Real Property Article, Annotated Code of Maryland 1996, as amended ("State Code").

The Respondent, who resides in Miami, Florida, contends that: (1) the Complainant damaged the Condominium in excess of ordinary wear and tear as a result of her tenancy, and the cost to repair that damage exceeded the amount of Complainant's security deposit; (2) she notified the Complainant approximately forty-five (45) days after the Complainant vacated the Condominium why she was retaining her deposit; (3) her lease with the Complainant stated that no interest would be paid on the security deposit; and (4) the Complainant is not entitled to a refund.

Although in October, 2000, the Respondent refunded to the Complainant her entire $260.00 security deposit, while the complaint was pending, as of the date of this hearing, the Respondent has not tendered a refund of any interest that might be due on the security deposit.

After determining that the complaint was not susceptible to conciliation, the Department duly referred this case to the Commission for its review, and on December 5, 2000, the Commission voted to hold a public hearing. Notice of the hearing date and time was sent to the parties on December 6, 2000, with a hearing date of February 26, 2001. The Respondent was sent notice at both her home address and her work address, by regular and certified mail, and the notice forwarded to her work address was signed for by "Olga Guerra" on December 11, 2000. The certified mail receipt for the copy of the notice sent to the Respondent's home address was returned by the US Postal Service as "Unclaimed."

A Summons and Statement of Charges was issued to the Respondent by the Commission on February 1, 2001, and personally served upon the Respondent on February 13, 2001, at her place of employment (See page 94 of Commission's Exhibit No. 1 of the Record).

By letter dated February 20, 2001, the Respondent wrote the Commission to request that the February 26, 2001 public hearing be postponed until May, 2001 (See page 95 of Commission's Exhibit No. 1). She stated therein that she would be in Texas the week of February 26 through March 1, 2001. By a letter dated February 21, 2001, the Commission notified the Respondent that her request was denied. On February 22, 2001, a letter was received from Michael T. Ringstad, who identified himself as the Court Administrator for the U.S. Department of Justice, Immigration Court, Miami, Florida. (See page 98 of Commission's Exhibit No. 1). In the letter, Mr. Ringstad states that the Respondent would be in a training session in Dallas, Texas, starting on February 26, 2000, and could not be excused. After consideration of this letter, the Commission once again denied the request for continuance. (See page 101 of Commission's Exhibit No. 1).

The public hearing in the matter of Odom v. Morris, relative to Case No. 10126, commenced on February 26, 2001, and concluded on that date. Present at the hearing and presenting testimony were the Complainant, Estelle Terese Odom, and the current occupant of the Condominium, Paul Fonseca, who was issued a Summons to appear at the hearing by the Commission. At the hearing, the Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1, including an appendage evidencing

service of the Summons and Complaint on the Respondent, and the requests for, and denial of, the continuance, which were made part of the hearing record.

FINDINGS OF FACT

Based on the testimony and evidence received at the hearing, the Commission makes the following findings of fact:

1. The Condominium was not licensed as a Rental Facility at any time during the Complainant's tenancy, in violation of Section 29-16 of the County Code.

2. On December 29, 1994, the Complainant and the Respondent entered into a one-year lease agreement for the rental of the Condominium (the "Lease"), which commenced on January 1, 1995, and expired on December 31, 1995.

3. On or about December 29, 1994, the Complainant paid the Respondent a security deposit of $360.00.

4. The Lease does not contain language informing the Complainant of her right to be present for a final walkthrough inspection of the Property and the procedure for making such a request, in violation of § 8-203(g)(1) of the State Code.

5. Paragraph 4 of the Lease states, in pertinent part, "The Tenant shall not be entitled to any interest on the aforesaid security."

6. After the expiration of the initial Lease term, December 31, 1995, the Complainant remained a tenant in the Condominium on a month-to-month basis.

7. During the course of the tenancy, Complainant and the Respondent agreed that $100.00 of the $360.00 security deposit would be applied to rent. Therefore, the Commission finds that the amount of the Complainant’s security deposit was reduced to $260.00.

8. By mutual agreement, the Complainant vacated the Condominium as of September 30, 1999, and her tenancy terminated as of that date.

9. By correspondence dated November 15, 1999 (See page 13 of Commission’s Exhibit No. 1), forty-five (45) days after the Complainant vacated the Condominium, and the termination date of her tenancy, the Respondent advised the Complainant that the cost to repair damage to the Condominium, specifically the carpet, nailholes in the walls, the bathroom ceiling and closet doors left off the hinges, was "close to $3,000.00". No part of the Complainant’s security deposit was returned.

10. By a letter dated October 19, 2000, received by the Department on October 24, 2000 (See pages 52-55 of Commission’s Exhibit No. 1), the Respondent returned the Complainant’s

$260.00 security deposit, but without a reasonable basis failed to refund any interest which had accrued on the deposit. Based on the duration of the Complainant's tenancy, January 1, 1995 through September 30, 1999, a total of 57 months, which is more than 54 months (4½ years) but less than 60 months (5 years), the amount of interest accrued on the deposit during her tenancy was $46.80 ($260.00 x 4% = $10.40 x 4.5 years = $46.80).

11. On May 16, 2000, the Respondent returned a "Property Status Response Card", dated April 25, 2000 (See page 28 of Commission's Exhibit No. 1) to the Department which stated that, as of that date, the Property was currently occupied by a relative, defined as "Owner or Owner's Spouse's sibling, parent, grandparent, child or grandchild," and therefore exempt from licensing.

12. The Commission finds, based on the testimony of Commission's witness Paul Fonseca, that: (A) he moved into the Property in October 1999, immediately after the Complainant vacated; (B) he is currently a tenant at the Property and pays rent to the Respondent; and (C) he is not a relative of the Respondent, or the Respondent's sibling, parent, grandparent, child or grandchild.

CONCLUSIONS OF LAW

Based upon a fair consideration of the testimony and evidence contained in the record, the Commission on Landlord-Tenant Affairs concludes:

1. The Commission notes that Title VIII, "Landlord and Tenant," of the State Code, including § 8-203, "Security Deposits," has been amended, and that the amendments became effective as of October 1, 1999. However, the termination of the Complainant's tenancy and the Respondents' alleged violations of § 8-203 took place prior to October 1, 1999, and therefore, although the hearing in this matter took place after October 1, 1999, the pre-October 1, 1999, provisions of Title VIII and § 8-203 apply in this case.

2. The Respondent failed to state sufficient grounds in her request for continuance to warrant a continuation of the hearing date of February 26, 2001. The Respondent was first notified of the hearing date in December, 2000, and was later given notice again in early February 2001. Her initial request for continuance, dated February 20, 2001, forwarded just six (6) days before the hearing date, says only that she will be away in Texas from February 26, 2001 through March 1, 2001. While she refers to a heavy work schedule, she offers no satisfactory explanation of why, given such a long lead time for notice of the hearing, she could not have arranged her schedule to be present, or why she waited until just before the hearing date to request the continuance. Nor does the Commission find persuasive her statement in her letter of February 20, 2001, that she would not be available until May 2001. The delay she was seeking, given the substantial notice she had of the initial hearing date, is, in the Commission's view unreasonable. It is also of note that Mr. Fonseca, who was summonsed by the Commission, was served by Certified Mail on February 5, 2001. There could be no assurance that if the hearing were delayed until May 2001, Mr. Fonseca could be successfully served once again, if that were found to be necessary.

Furthermore, the letter from Mr. Ringstad does not alter the Commission's view. It offers, for the first time, a specific explanation of why the Respondent claims she could not appear on February 26, 2001. Yet it is not from the Respondent herself, and offers specifics that, for

whatever reason, the Respondent failed to include in her own letter. Further, its late receipt warrants against the granting of the request for the continuance.

3. The Respondent failed to provide the Complainant with a written receipt for the payment of her security deposit that contained language advising the Complainant of her right to be present when the Respondent inspected the Property at the termination of the tenancy in order to determine if any damage was done, in violation of § 8-203 (g)(1) of the State Code, and therefore, the Respondent has forfeited her right to withhold any portion of the Complainant's security deposit for damages.

4. The Respondent failed to issue the Complainant an itemized list of damages together with a statement of costs actually incurred to repair that damage within thirty (30) days after the termination of the tenancy, in violation of § 8-203 (h)(1) of the State Code, and as a result, pursuant to § 8-203 (h)(2) of the State Code, she has forfeited her right to withhold any part of the Complainants' security deposit for damages.

5. The Respondent, without a reasonable basis, failed to pay the Complainant interest which had accrued on her security deposit at the rate of 4% simple interest per annum, accruing in 6-month intervals of 2%, which sum is $46.80, in violation of § 8-203(f)(1) of the State Code, and therefore, pursuant to § 8-203 (f)(4) of the State Code, she is liable to the Complainant for the accrued interest plus three times that amount as a penalty.

6. The Respondent caused a defective tenancy by failing to properly handle and dispose of the Complainant's security deposit plus accrued interest in accordance with the requirements of § 8-203 of the State Code.

7. The Respondent failed to obtain a Rental Facility License from the Department prior to offering it for rent to the Complainant, in violation of Section 29-16 of the County Code, and continues to rent the Property in violation of the County Code.

ORDER

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

1. Pay the Complainant **$228.80**, which represents the refund of $57.20 interest accrued on the security deposit, calculated at the rate of 4% per annum from the date it was given to the Respondent, January 1, 1995, until the date the Complainant's security deposit was refunded, October 14, 2000, ($260.00 x 4% = $10.40 x 5.5 years = $57.20), plus a penalty of $171.60, representing three times the unpaid interest based on the Respondent's failure to comply with § 8- 203(f)(1) and (4) of the State Code, and her failure to have a reasonable basis to withhold the interest. No penalty has been imposed with respect to the $260.00 security deposit withheld until October, 2000 by Respondent, because, although returned late, it was nonetheless returned well before the hearing was scheduled in this matter; and,

2. Obtain a Rental Facility License from the Department for the Property.

The foregoing decision was concurred in unanimously by Commissioner Roger Luchs, Panel Chair, Commissioner Mattie Ligon, and Commissioner Gary Everngam.

To comply with this Order, Respondent, Brenda Morris, must:

1. Forward to the Department's Office of Landlord- Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, Maryland, within fifteen (15) calendar days of receipt of this Decision and Order, a check payable to Estelle Terese Odom in the full amount of $228.80; and,

2. Forward to the Department's Division of Licensing and Registration, 100 Maryland Avenue, 2nd Floor, Rockville, Maryland, within fifteen (15) calendar days of receipt of this Decision and Order, a properly executed Rental Facility License Application, including payment of the required License fee and any past due License fees.

Respondent, Brenda Morris, is hereby notified that Section 29-44 of the County Code declares that failure to comply with any provision of 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 you comply with this Order .

In addition to the issuance of a $500.00 civil fine Class A violation, should the Commission determine that the Respondent has not, within fifteen (15) calendar days of the receipt 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 County Attorney for additional legal enforcement.

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

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Roger Luchs, Panel Chairperson
Commission on Landlord- Tenant Affairs