

BEFORE THE
COMMISSION OF LANDLORD-TENANT AFFAIRS
FOR MONTGOMERY COUNTY, MARYLAND

In the Matter of Jerome J. Mullin Complainant	
v.	Case No. 10283
Robin Schafer-Swarm Rental Facility: 1920 Glen Ross Road, Silver Spring MD 20910 (Unlicensed Rental Facility) Respondent	

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DECISION AND ORDER

The above captioned case having come before the Commission of 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 27th day of February, 2001, found, determined and ordered, as follows:

BACKGROUND

On January 21, 2000, Jerome J. Mullin (the "Complainant"), former tenant at 1920 Glen Ross Road, Silver Spring Maryland (the "Property"), an unlicensed 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 he alleged that Robin Schafer-Swarm (the "Respondent"), owner of the Property: (1) assessed

unjust charges, in the amount of \$460.36, against his \$1,912.50 security deposit after the termination of his tenancy, in violation of § 8-203(g)(1) of the Real Property Article, Annotated Code of Maryland, 1996, as amended ("State Code"); (2) failed to issue him an itemized list of damages together with a statement of actual costs incurred within thirty (30) days after the termination of his tenancy, in violation of § 8-203(h)(1) of the State Code; (3) failed to pay him 4% simple interest in the amount of \$76.50 which had accrued on his security deposit, in violation of § 8-203(f)(1) of the State Code; and (4) failed to refund a portion of his security deposit plus accrued interest within forty-five (45) days after the termination of his tenancy, in violation of § 8-203 (f)(1) and (4) of the State Code.

Specifically, the Complainant asserts that: (1) at the time he vacated the Property, August 31, 1999, it was not damaged in excess of ordinary wear and tear; (2) by a letter postmarked October 18, 1999, forty-eight (48) days after he vacated the Property, the Respondent refunded \$1,452.14 of his security deposit and provided him with an itemized list of damages, totaling \$500.00, she claimed as damage; (3) the damages claimed by the Respondent were either the result of ordinary wear and tear or the Respondent's responsibility to repair and maintain; (4) the Respondent did not incur any actual expense to repair the damages she claimed; and (5) the Respondent failed to pay him interest, in the amount of \$76.50, which had accrued on his deposit.

By a letter dated May 24, 2000 (See page 5 of Commission's Exhibit No. 1), the Complainant amended his complaint to claim, in addition to the refund of the withheld portion of his security deposit, \$460.36, plus \$76.50 accrued interest, three times that amount, \$1,610.58, as a penalty based on the Respondent's unreasonable withholding of those amounts. Therefore, the Complainant is seeking an Order from the Commission for the Respondent to refund the balance of his security deposit (\$460.36), plus accrued interest (\$76.50) plus a three-fold penalty (\$1,610.58) for a total award of \$2,147.44.

After determining that the complaint was not susceptible to conciliation, the Department duly referred this case to the Commission for its review, and on October 3, 2000, the Commission voted to accept jurisdiction of this case, and scheduled a public hearing for November 17, 2000. However, based on the Commission's inability to serve the Respondent with notice of the hearing, it was postponed until January 24, 2001.

The public hearing in this matter of Case No. 10283 commenced on January 24, 2001, and concluded on that date. The record reflects that the parties were given proper notice of the hearing date and time. Present at the hearing and presenting testimony and evidence were the Complainant, Jerome Mullin, the Respondent, Robin Schafer-Swarm, and one witness she called, Doris Stovall, a friend of the Respondent. The Commission also called one witness, the Department's Senior Inspector, Ron Hall, Division of Consumer Affairs, to testify regarding the Commission's "Summons and Statement of Charges," he served on the Respondent.

Without objection from the Complainant or the Respondent, the Commission entered into the record of the hearing the case file compiled by the Department, identified as Commission's Exhibit No. 1, and a copy of the Montgomery County Journal Newspaper, dated November 29, 2000, with an address label that reads: "L. Schafer, 1920 Glen Ross Road, Silver Spring, MD

20910-2121. The Commission also entered into the record one (1) exhibit offered by the Complainant, a letter dated September 28, 1999 attached to an envelope postmarked October 18, 1999, identified as Complainant's Exhibit No. 1; and two (2) exhibits offered by the Respondent, a canceled check (#1347 dated November 11, 1995), identified as Respondent's Exhibit No. 1, and a series of 22 undated photographs, collectively identified as Respondent's Exhibit No. 2.

FINDINGS OF FACT

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

1. The Respondent failed to license the Property as a Rental Facility prior to offering it for rent to the Complainant or at any time during the Complainant's tenancy, in violation of Section 29-16 of the County Code.
2. On September 1, 1998, the Complainant and Respondent entered into a one-year lease agreement (the "Lease") for rental of the Property (See pages 6-14 of Commission's Exhibit No. 1), which commenced on September 1, 1998, and expired on August 31, 1999.
3. On or about September 1, 1998, the Complainant paid the Respondent a security deposit in the amount of \$1,912.50, and the written receipt for the payment of security deposit is contained in Paragraph 5, "Security Deposit," of the Lease.
4. Neither the receipt for the Complainant's payment of the security deposit contained in Paragraph 5, "Security Deposit," of the Lease, nor any other provision in the Lease, contain language informing the Complainant of his right to receive from the Respondent a written list of all existing damages or the procedure for making such a request, as required by § 8-203 (d)(1) and (2) of the State Code.
5. Neither the receipt for the Complainant's payment of the security deposit contained in Paragraph 5, "Security Deposit," of the Lease, nor any other provision in the Lease, advised the Complainant of his right to be present when the Respondent inspected the Property at the end of the Complainant's tenancy in order to determine if any damage was done to the Property, as required by § 8-203 (g)(1) of the State Code.
6. The Complainant vacated the Property at the end of the Lease term, August 31, 1999, having paid rent in full to the Respondent through that date, and his tenancy terminated as of that date.
7. The Commission credits the testimony of the Respondent that after the Complainant vacated, August 31, 1999, she moved into the Property.
8. By a letter mailed on October 18, 1999 (See Complainants Exhibit No. 1), forty-eight (48) days after the termination of the Complainant's tenancy, the Respondent issued him a list of deductions being made from his security deposit, itemized as follows:

Cleaning of premises, stove top, sills, windows, tubs, etc. \$ 50.00

Painting, interior retouching of walls, doors	20.00
Fireplace, damper missing	285.00
Carpeting on back porch	20.00
Wood floors, holes, stain in back bedrm	100.00
Furnace, oil refill	100.00
Mower, not working	25.00
Garage door, funds deducted from previous 96/98 contract	<u>30.00</u>
Deposit with interest less \$30.00	\$1,952.14
	<u>500.00</u>
Return deposit	\$1,452.14

9. Also contained in the envelope postmarked October 18, 1999, was a partial refund of the Complainant's security deposit, in the amount of \$1,452.14.

10. The Respondent failed to refund to the Complainant one year's simple interest, which accrues at six-month intervals of 2% simple from the day it is given to the landlord, which sum is \$76.50 ($\$1,912.50 \times 4\% = \76.50).

11. The Respondent failed to provide any probative evidence or persuasive testimony that the Property was damaged in excess of ordinary wear and tear by the Complainant during his tenancy, or that she incurred any actual expense to repair any such damages. The Commission finds therefore that the Property was not damaged in excess of ordinary wear and tear by the Complainant, and therefore, the Respondent had no reasonable basis to withhold any portion of the Complainant's security deposit or accrued interest.

12. The Respondent, without a reasonable basis, failed to refund \$460.36 of the Complainant's security deposit, and without a reasonable basis also failed to refund to the Complainant \$76.50 interest which had accrued on the deposit.

CONCLUSIONS OF LAW

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

1. The Commission notes that Title VIII, "Landlord and Tenant," of the State Code, including Section 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

Respondent's alleged violations of § 8-203 took place prior to October 1, 1999; therefore, the Commission must apply the State Code as it was applied prior to the amendment.

2. The Respondent failed to provide the Complainant with a written receipt for the payment of his security deposit that contained language informing the Complainant of his right to receive from the Respondent a written list of all existing damages or the procedure for making such a request, in violation of § 8-203 (d)(1) of the State Code, and therefore, pursuant to § 8-203 (d)(2) of the State Code, the Respondent is liable to the Complainant for threefold the amount of the security deposit.

3. The Respondent failed to provide the Complainant with a written receipt for the payment of his security deposit that contained language advising the Complainant of his 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 cost 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 failed to provide any probative evidence or testimony that the Property was damaged in excess of ordinary wear and tear by the Complainant during his tenancy, or that she incurred any actual expense to repair any such damages, in violation of § 8-203(g)(1) of the State Code. Therefore, the Respondent was not entitled to withhold any portion of the Complainant's security deposit on the basis of damage to the Property.

6. The Respondent, without a reasonable basis, failed to refund \$460.36 of the Complainants' security deposit within forty-five (45) days after the termination of his tenancy, 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 threefold the withheld amount.

7. The Respondent failed to pay the Complainant interest which had accrued on his security deposit in the amount of \$76.50, 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 threefold the withheld amount.

8. 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 and Paragraph 5, "Security Deposit," of the Lease.

ORDER

In view of the foregoing, the Commission of Landlord-Tenant Affairs hereby orders the Respondent to pay the Complainants \$1,073.72, which sum represents the refund of the balance of the Complainant's security deposit (\$460.36), plus accrued interest (\$76.50), plus a one-fold penalty based on the Respondent's unreasonable withholding of that amount (\$536.86) from the Complainant's security deposit.

The one-fold penalty is being assessed against the Respondent because of her failure to comply with the requirements of State security deposit law and her unreasonable withholding of a portion of the Complainant's security deposit. However, the severity of the Respondent's actions do not warrant a threefold penalty because she did refund a large portion of the Complainant's security deposit.

The foregoing Decision was concurred in unanimously by Commissioner John Peterson, Commissioner Martin Schnider, and Commissioner Andrea Sonde-Hawthorne, Chair.

To comply with this Order, Respondent, Robin Schafer-Swarm, must forward to the 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 Jerome Mullin in the full amount of \$1,073.72.

Respondent, Robin Schafer-Swarm, 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 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.

Andrea Sonde-Hawthorne, Panel Chairperson

Commission on Landlord- Tenant Affairs