Before the
Commission on Landlord-Tenant Affairs
Montgomery County , Maryland

In the Matter of: Crystal Chorvat and Bobbiann Bowman Complainants vs. Paul and Rowshon Daley Respondents Rental Facility: 18801 Still Meadows Court, Gaithersburg, MD (Unlicensed)	Case #: 25207

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 the

testimony and evidence of record, it is therefore, this 25th day of March, 2004, found, determined, and ordered, as follows:

BACKGROUND

On August 4, 2003, Crystal Chorvat and Bobbiann Bowman (collectively hereinafter referred to as "Complainants" or individually referred to as "Chorvat" or "Bowman"), former tenants at 18801 Still Meadows Court, Gaithersburg, 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 they alleged that Paul and Rowshon Daley ("the Respondents"), owners of the Property, and their management agent, Realty Group Property Management, Inc. ("the Agent"): (1) failed to release them both from the lease without penalty based on Complainant Bowman's receipt of permanent change of station orders, in violation of § 8-212.1, "Liability of military personnel receiving certain orders," of the Real Property Article, Annotated Code of Maryland, 1999, as amended ("State Code"), and Paragraph 7, "Military Clause," of the lease; (2) failed to refund any portion of their $2,595.00 security deposit within forty-five (45) days after the termination of their tenancy, in violation of § 8-203(e)(1) of the State Code; (3) assessed unjust charges against their security deposit after the termination of their tenancy, in violation of § 8-203(f)(1)(i) of the State Code; (4) assessed unpaid rent, late fees and other charges for breach of lease when no such breach occurred, in violation of § 8-203(f)(2) of the State Code; and (5) failed to present them with an itemized list of damages together with a statement of actual costs incurred within forty-five (45) days after the termination of their tenancy, in violation of § 8-203(g)(1) of the State Code.

By a letter dated September 3, 2003, the Complainants conceded to the following deductions from their security deposit: $20.00 for cleaning the stove and $50.00 for the removal of a desk. By the same September 3rd letter, the Complainants also amended their complaint to request, in addition to the refund of their security deposit, a three-fold penalty based on Respondents unreasonable withholding of their deposit.

The Respondents contend that: (1) only Bowman received change of station orders relieving her of future obligations under the lease; however, co-tenant Chorvat, who is also a member of the United States military, received no such orders, and therefore remained liable under the terms and conditions of the lease; (2) Chorvat breached the lease by prematurely terminating her tenancy; (3) Chorvat is liable for lost rental income and damage to the Property that is the result of her breach of lease; (4) the

Complainants damaged the Property in excess of ordinary wear and tear as a result of their tenancy; and (5) the total amount of lost rent and damages exceed the amount of the Complainants' security deposit, and therefore, Chorvat is not entitled to a refund.

The Complainants are seeking an Order from the Commission for the Respondents to refund their $2,595.00 security deposit, less damages rightfully and reasonably withheld ($70.00) plus a three-fold penalty of the unreasonably withheld amount.

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 7, 2003, the Commission voted to hold a public hearing on November 19, 2003. The public hearing in the matter of Crystal Chorvat and Bobbiann Bowman v. Paul and Rowshon Daley, relative to Case No. 25207, commenced on November 19, 2003, and was continued for a second night of hearing, February 11, 2004, and concluded on that date.

The record reflects that the Complainants and the Respondents were given proper notice of the hearing dates and times. Present at the first night of hearing and presenting testimony and evidence were the Complainants Crystal Chorvat and Bobbiann Bowman, and Respondent Paul Daley. Complainant Bowman was not present at the second night of the hearing on February 11, 2004. The Respondents were represented at the hearing by attorney Sylvia Wagner.

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.

Without objection from the Complainants and noting the objection of the Respondents, 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 received at the hearing, the Commission makes the following findings of fact:

1. The Complainants and the Respondents entered into a 10-month lease agreement (the "Lease") for the rental of the Property, commencing November 1, 2002, and ending August 31, 2003. The rent was $1,995.00 a month.

2. At the commencement of Lease, the Complainants paid the Respondents a security deposit in the amount of $2,095.00, plus a pet deposit of $500.00, for a total security deposit of $2,595.00.

3. The Lease form used by the Respondents was a standard Single Family Dwelling Lease for Montgomery County, Maryland, approved by the Department and the Greater Capital Area Association of Realtors, Inc. The Lease includes a "Military Clause," at Paragraph 38, which reads as follows:

> "In the event Tenant is a member of the Armed Services and on active duty at the time enters into this lease, and Tenant subsequently receives permanent change of station orders or temporary change of station orders for a period in excess of 3 months, Tenant's liability to pay rent may not exceed: (1) 30 days rent after written notice and proof of the assignment is given to the Landlord; and (2) the cost of repairing damage to the premises caused by the Tenant. This clause also applies to those persons who receive orders releasing them from military services."

4. It is undisputed that both Complainants were members of the U.S. Navy on active duty at the time they entered into this Lease and that, in the application process, the Respondents were made aware that both Complainants were on active duty. It is also undisputed that the joint income of the Complainants was considered in determining whether to accept them as tenants of the Property, it being understood that the income of either alone would be insufficient to meet Respondents' requirements for tenancy.

5. As early as November, 2002, Chorvat became aware that Bowman might be deployed to a medical ship in connection with the prospect of war in Iraq. This information was communicated to Respondents' agent, Ms. Jenifer Mimenza. This speculation became reality when in late February, 2003, Bowman was called up to serve on a ship in the Persian Gulf. The precise location of her service, and duration, were not communicated to Bowman, for security reasons.

6. On March 3, 2003, Bowman provided written notice to Respondents' Agent of her change of station orders. It was agreed that, under the Military Clause, Bowman would be released from further obligations under the Lease, other than the obligations required under Paragraph 38, i.e. payment of thirty (30) days rent and the cost of repairing damage to the Property caused by her. Chorvat concluded that the release of Bowman released her from the Lease as well, apparently under the assumption that Respondents accepted her and Bowman as tenants by combining their income, with the knowledge that neither would meet Respondents' tenancy requirement by herself, and because, in her view, the release of Bowman, by law, also released her.

7. It is evident that Paragraph 38 of the Lease is intended as a form of release of tenants called up to active military duty or under other circumstances set forth in that clause. Bowman's departure, and Respondents' acceptance of that departure and the applicability of Paragraph 38 to her situation, necessarily meant that she was released from her obligation to pay rent under the Lease 30 days after delivery of her notice to vacate.

8. Respondents, however, viewed Paragraph 38 as applying only to Bowman. In their view, Paragraph 18 of the Lease, "Joint and Several Liability," which provided for joint and several liability of the tenants, meant that, even though Bowman was released, Chorvat was still obligated to fulfill Tenants' obligations for the remainder of the Lease term. In recognition of

Chorvat's limited income, and their own desire to have the Property occupied rather than vacant until their return to the United States from an overseas assignment for the State Department, sometime in mid-March 2003, after both Bowman and Chorvat had vacated, the Respondents expressed a willingness to reduce the monthly rent due for the duration of the Lease for Chorvat to $1,000.00 a month, if she moved back into the Property. Nonetheless, by implication, Respondents expected all other terms of the Lease to be adhered to by Chorvat. In short, Respondents' position was that the Lease remained in full force and effect, but with only one Tenant (Chorvat) under the lease. With this interpretation, they withheld the Complainants' security deposit in its entirety tendered to secure the performance of both

Tenants, to cover rent at the rate of $1,000.00 per month for the period April through July, 2003, and to cover certain expenses for repairs and cleaning for which they claimed Complainants are responsible.

9. The Complainants vacated the Property as of March 3, 2003, having paid rent to the Respondents only through March 31, 2003.

10. Prior to vacating the Property, the Complainants paid the Respondents $300.00 for carpet cleaning. The Commission finds that the $300.00 carpet cleaning fee is, pursuant to § 8-203(a)(3) of the State Code, an additional security deposit, and as such, increased the Complainants' security deposit from $2,595.00 to $2,895.00.

11. The Respondents incurred only $175.00 to clean the carpets after the termination of the Complainants' tenancy (See Respondents' Exhibit No. 7).

12. On July 15, 2003, Respondents' Agent, Kathy Jones, Realty Group Property Management, sent the Complainants a statement of unpaid rent, at a reduced amount of $997.50 per month, for the months of April, May, June and July 2003, and late fees in the amount of $48.63 for April 2003, and $49.88 for May, June and July 2003, for a total of $4,188.27. In addition, the notice included the following handwritten statement, "This reflects rent and late fees only. We have until Sept. 14 to determine charges for damages."

13. On September 12, 2003, Respondents forwarded to the Complainants an itemized list of damages and unpaid rent being claimed against their security deposit. The letter reflected Respondents' accounting and that, in their view, in addition to the retention of their entire security deposit, there was a balance due from the Complainants of $1,919.40 for unpaid rent and damage to the Property caused by the Complainants in excess of ordinary wear and tear.

CONCLUSIONS OF LAW

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

1. Section 8-203(a)(3) of the State Code, defines a "security deposit" as "any payment of money, including payment of the last month's rent in advance of the time it is due, given to a landlord by a tenant in order to protect the landlord against nonpayment of rent,

damage due to breach of lease, or damage to the leased premises, common areas, major appliances, and furnishing." In addition to the $2,595.00 security deposit paid by the Complainants and properly receipted by the Respondents as a security deposit in the Lease, the Complainants also paid to the Respondents $300.00 for carpet cleaning, which the Commission

concludes was given to the Respondents "in order to protect the landlord against … damage to the leased premises," and as such, is part of the Complainants' security deposit and is refundable pursuant to § 8-203(e) of the State Code.

2. Paragraph 38 of the Lease tracks the Real Property Article, § 8-212.1 (2003 ed.). Neither the statute nor the Lease itself addresses, however, the specific issue here, which is what liability, if any, attaches to one co-tenant when another co-tenant's obligations are terminated pursuant to Paragraph 38.

3. An opinion of the Maryland Attorney General's office, issued September 15, 1992, sets the stage for an analysis of this issue. A copy is attached. That opinion, which addresses a lease with only a single tenant, confirms that in the event a tenant meets a requirement of the Military Clause of the lease, and the aforesaid statutory provision, the lease is terminated. Here, the Respondents construe Paragraph 38 of the Lease as providing for a lease termination as to one tenant only, i.e. Bowman. But that construction is contrary to several well-established legal principles. As is discussed above, Paragraph 38 of the Lease, in effect is a form of release clause. Although it springs from a statutory provision, under common law principles, absent express language to the contrary, the release of one obligor releases all. Chicago Title Insurance Co. v. Lumberman's Mutual Casualty Co., 707 A.2d 913 (Md. App. 1998), cert. denied. Roe v. Citizens National Bank, 358 A.2d 267 (Md. App. 1976). One reason for this principle is that, if all obligors were not released, then those remaining liable could seek contribution from the released party, thereby negating the whole point of the release. Chicago Title, supra. Here, of course, Paragraph 38 did not specify that one tenant would remain liable if the other was called up to active military service as specified in that Paragraph. Therefore, it is the conclusion of the Commission that Paragraph 38 of the Lease released both Chorvat and Bowman from all liability for

rent other than 30 days rent after written notice was given to the Respondents and the cost of repairing damage caused by the Complainants. Based on the date of Complainants' notice to vacate, March 3, 2003, the Commission finds that Complainants' liability for rent under Paragraph 38 of the Lease terminated on April 2, 2003, and that Complainants were responsible for payment of rent to the Respondents for thirty (30) days from March 3, 2003, i.e. through April 2, 2003. Therefore, the Complainants failed to pay the Respondents for rent for the period April 1, 2003 through April 2, 2003, in the amount of $131.18. ($1,995.00 monthly rent x 12 months = $23,940.00 ÷ 365 days = $65.59 daily rent x 2 days = $131.18).

4. In summation, the Complainants' liability for rent ended 30 days after Bowman notified Respondents of her being called up to active military service and she and Chorvat were only responsible for rent for 30 days after the notice was issued. Based on the Complainants' failure to pay rent to the Respondents for the period April 1 to April 2, 2003, the Respondents were within their right to withhold pro rata rent, in the amount of $131.18 from the Complainants' security deposit.

5. Normally, if a lease is terminated or expires, but the tenant remains in possession with the landlord's consent, a new tenancy is created, rather than a continuation of the former

tenancy. Darling Shops Delaware Corp. v. Baltimore Center Corp., 60 A.2d 669 (Md. 1948). Thus, if Chorvat had held over, and paid $1,000.00 monthly rental, a new, monthly tenancy would have been created. There was no holdover, however, because the Complainants' tenancy terminated when they vacated the Property.

6. The concept of joint and several liability is inapplicable here because, in a contractual situation, this concept applies only in the event of a default by a contracting party. Meyer v. Frenkel, 77 A. 369 (Md. 1910), Md. Code "Courts and Judicial Proceedings" § 11-103 (2002 Repl. Vol.). Where there is a default, those who are jointly and severally liable can be sued individually or together in a lawsuit, and each one held responsible for the entire indebtedness. Here, however, there was no default. The law expressly authorized and provided for the termination of the Lease as to Bowman and therefore, provided for her release. Bowman's moving out of the Property was not a default. As discussed above, neither was Chorvat's moving out.

Respondents tried to keep the same lease in effect by requiring Chorvat to honor it for the duration of the term. While they were agreeable to reducing the rent for Chorvat, that was an

accommodation on their part, not because they believed her liability for the rent reserved in the Lease was for only one-half. Under their theory, i.e. joint and several liability, Chorvat remained liable for the entire rental due under the Lease, as well as for the remainder of the term of the Lease. The logical consequence of this line of thought, of course, was that they could keep the entire security deposit, in which both Complainants had an interest, to cover unpaid rent they alleged was due from Chorvat only, even though Bowman was already discharged of any further obligation for rent. This obviously would completely undermine the point of Paragraph 38 of the Lease. Had Chorvat accepted the Respondents' accommodation and remained in possession, it is the Commission's view that, as noted above, this would have entailed a new, oral tenancy, not a continuation of the old tenancy.

7. The Respondents failed to send the itemized list of damages to the Complainants until September 12, 2003, well after the 45-day period for providing notice with respect to damages as required by § 8-203(g)(1) of the State Code and Paragraph 3, "Security Deposit," of the Lease. That is because the Complainants' tenancy terminated when they vacated the Property after giving notice of termination under Paragraph 38 of the Lease. Thus, pursuant to § 8-203 (g)(2) of the State Code, the Respondents forfeited their right to withhold any portion of the Complainants' security deposit for damages, because their notice was not given within forty-five 45 days after Complainants vacated.

8. Based on the duration of the Complainants' tenancy, which was less than 6 months, pursuant to § 8-203(e)(2) of the State Code, no interest accrued on their security deposit.

9. Although the Commission concludes that the Respondents wrongfully withheld the bulk of the Complainants' security deposit, to award a penalty, as requested by the Complainants, pursuant to Section 29-47(b)(7) of the County Code, the Commission must consider the egregiousness of the Respondents' conduct in wrongfully withholding the

Complainants' security deposit, whether or not the Respondents acted in bad faith, and any prior history by the Respondents of wrongful withholding of security deposits. In this case, the

Commission has found that although the Respondents were mistaken in their view that they could withhold the security deposit, Respondents' actions do not rise to the level of bad faith or egregiousness that would warrant the award of a penalty. Therefore, the Complainants' request for a penalty is hereby denied.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders the Respondents to pay the Complainants **$2,788.82**, which sum represents the Complainants' security deposit ($2,895.00), plus the non-refunded $25.00 rent credit, less 2 days unpaid rent ($131.18).

The foregoing Decision was concurred in unanimously by Commissioner Lyana Palmer, Commissioner Kwaku Ofori, and Commissioner Roger Luchs, Panel Chairperson.

To comply with this Order, Respondents, Paul and Rowshon Daley, 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 Complainants, Crystal Chorvat and Bobbiann Bowman, in the full amount of $2,788.82.

The Respondents, Paul and Rowshon Daley, 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 ($2,788.82) if they seek a stay of enforcement of this Order.

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Roger D. Luchs, Panel Chairperson

Commission on Landlord-Tenant Affairs