

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

In the matter of:

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Heidi Downing, Julie Hussion,

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Megan McIntosh, and Heather Ward

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Complainants

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V.

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Case No. 25714

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James and Pamela Finlay

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Respondents

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Rental Facility: 8512 Salem Way, Bethesda, Maryland – Unlicensed Property

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, 29-44 and 29-47 of the Montgomery County Code, 2001, as amended (“County Code”), and the Commission having considered the testimony and evidence of record, it is therefore, this 11th day of May, 2005, found, determined and ordered, as follows:

On July 15, 2004, Heidi Downing, Julie Hussion, Megan McIntosh, and Heather Ward (the "Complainants"), former tenants at 8512 Salem Way, Bethesda, MD, (the "Property"), a 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 James and Pamela Finlay, owners of the Property, (the "Respondents"): (1) assessed unjust charges against their security deposit plus accrued interest after the termination of their tenancy, in violation of § 8-203(e)(4) of the Real Property Article, Annotated Code of Maryland, 1999, as amended ("State Code"); (2) failed to issue them an itemized list of damages together with a statement of costs actually incurred to repair that damage within 45 days after the termination of their tenancy, in violation of § 8-203(g)(1) of the State Code, and pursuant to § 8-203(g)(2), the Respondents forfeited their right to withhold any portion of the security deposit plus accrued interest for damages; and (3) failed to refund any portion of their security deposit in violation of § 8-203(e)(1) of the State Code.

Specifically, the Complainants assert that: (1) they did not damage the Property in excess of ordinary wear and tear as a result of their tenancy; (2) they issued a notice to quit and vacate almost three-months prior to the expiration of their lease agreement to which the Respondents verbally agreed; and (3) on April 30, 2004, the Respondents listed the Property for sale "only."

The Respondents contend that: (1) the Complainants breached the lease agreement by moving out one-month prior to the expiration of the lease agreement; (2) the Complainants' lease obligation ended on June 30, 2004, and therefore, the Complainants were rent responsible through that date; (3) a list of damages was sent to the Complainants informing them of their responsibility for the rent and the unpaid Washington Suburban Sanitary Commission (WSSC) water bill; and (4) they listed the Property for sale only because it was their intention to sell the Property after the termination of the Complainants' lease.

The Complainants are seeking an Order from the Commission for the Respondents to refund their entire security deposit of \$2,200.00, plus accrued interest of \$88.00 for a total of \$2,288.00. In addition to the refund of their security deposit, the Complainants are requesting threefold of the withheld amount (\$6,864.00), plus attorney's fees as a penalty.

After determining that the complaint was not susceptible to conciliation, the Department referred this case to the Commission for its review, and on January 4, 2005, the Commission voted to hold a public hearing on February 24, 2005. However, at the request of Respondents' attorney, Matthew S. Evans, III, the Commission postponed the hearing date until March 16, 2005.

The public hearing in the matter of Heidi Downing, Julie Hussion, Megan McIntosh, and Heather Ward v. James and Pamela Finlay, relative to Case No. 25714, commenced on March 16, 2005, and concluded on that date. The record reflects that the Complainants and the Respondents were given proper notice of the hearing date and time. Present at the hearing and presenting evidence were the Complainants, Julie Hussion, Megan McIntosh, and Heather Ward, and the Respondents, James and Pamela Finlay. The Complainants were represented at the hearing by attorney Christopher Staiti, and the Respondents were represented at the hearing by attorney Matthew S. Evans, III.

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. The record of the hearing was kept open for 10 days, until March 26, 2005, to allow the Respondents an opportunity to provide the Commission with a copy of the final WSSC bill and payment and receipts for plumbing repairs made during the Complainants' tenancy. By a letter dated March 25, 2005, Respondents' attorney provided the Commission with copies of the requested receipts for plumbing work and a photocopy of the cancelled check (both sides) for payment of the final WSSC bill. The record of the hearing closed on March 25, 2005.

Furthermore, the Commission has 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

1. On June 7, 2003, the Complainants and the Respondents entered into a one-year lease agreement (the "Lease") for the rental of the Property, which commenced on July 1, 2003, and was due to expire on June 30, 2004.

2. At the time they signed the Lease, the Complainants paid the Respondents a security deposit of \$2,200.00, which is receipted at Paragraph 2, "Security Deposit", of the Lease.

3. The Lease failed to contain the disclosures required by § 8-203.1(a), “Security deposit receipt,” of the State Code.

4. In a letter dated March 4, 2004, the Complainants issued to the Respondents a written notice of their intention to vacate the Property by June 1, 2004, providing the Respondents with a forwarding address for Julie Hussion at 5 Little Brooke Court, Olney, MD 20832, to mail their security deposit.

5. The Lease does not provide for oral modification of its terms by the parties. The Commission finds that the Respondents neither orally agreed to an early termination nor did they advise the Complainants that they would not be responsible for the last month’s rent. The Commission did not find persuasive Complainants’ testimony that the Respondents agreed to an early termination of the Lease based on Respondents’ desire to sell the Property.

6. In a letter dated April 2, 2004, the Complainants issued the Respondents a second written notice reiterating their intent to vacate the Property by June 1, 2004, and again providing the Respondents with a forwarding address for Julie Hussion to mail the security deposit.

7. On April 30, 2004, two months prior to the expiration of the Lease, the Respondents listed the Property for “sale” only with Long and Foster Real Estate, Inc. (Listing #MC4823791). The Property sold on July 13, 2004, and settled on August 18, 2004. At no time after receiving notice from the Complainants that they intended to vacate the Property a month prior to the expiration of their Lease, did the Respondents advertise the Property for rent.

8. At the request of the Complainants, Respondent James Finlay conducted a move-out inspection of the Property on June 8, 2004. Respondent Jim Finlay refused to sign a move-out inspection report as requested by the Complainants. The Commission notes that there were no allegations of damage to the Property beyond normal wear and tear.

9. The Complainants vacated the Property on May 31, 2004, having paid rent in full to the Respondents through that date.

10. In a letter dated June 2, 2004, the Complainants again requested the return of their security deposit plus 4% interest, for a total of \$2,496.00, and again provided the forwarding address for Julie Hussion.

11. The Respondents testified that on June 23, 2004, they mailed the Complainants a letter informing them, in pertinent part, "Since we are unable to rent or sell the property, you are bound by that lease to pay the monthly rent for June of \$2,250." The letter also requested payment for the water and sewage bill for the period March 24 through May 21, 2004, in the amount of \$666.27. The Complainants testified that they received neither the June 23, 2004 letter nor any itemized list of damages from the Respondents withholding their security deposit. The Respondents maintain that the June 23, 2004 letter was the 45-day letter as required by § 8-203 of the State Code.

12. The Complainants abandoned the Property as of May 31, 2004, one month prior to the expiration of the Lease, and did not pay rent to the Respondents, in the amount of \$2,250.00, for the month of June 2004.

13. Upon notification by the Complainants that they were vacating the Property one month early, the Respondents placed the Property up for sale with Long and Foster Realty, Inc. The Respondents contend that this was their reasonable diligence to mitigate the Complainants' damages. The Commission does not find that their effort to mitigate damages by placing the Property up for sale satisfied the requirement of § 8-207(a)(3) of the Real Property Article, Maryland Annotated Code.

14. The Respondents did not advertise the Property for rent at any time after the Complainants notified them of the Complainants' intention to vacate the Property prematurely or at any time after the Complainants vacated the Property on May 31, 2004.

15. The Respondents testified that the Complainants' security deposit of \$2,200.00 was withheld for unpaid rent for the month of June 2004, and not for the unpaid water bill. In any event, the Commission finds that the Respondents failed to provide sufficient evidence regarding what amount the Complainants actually owed toward the last water bill of their tenancy, or what final amount the Respondents paid to WSSC.

16. The Respondents failed to refund any portion of the Complainants' security deposit within 45 days after the termination of the Complainants' tenancy, and failed to pay the Complainants interest which had accrued on the security deposit which sum is \$44.00.

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. The Complainants breached the Lease with the Respondents and abandoned the Property prior to the termination date of June 30, 2004. The Complainants demanded the return of their deposit within forty-five (45) days of abandoning the Property in compliance with Real Property Article § 8-203(h)(2)(i) of the State Code.

2. Pursuant to § 8-207(a)(3) of the State Code, the Respondents 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 *not* a new owner, and the listing of the property only for sale did not satisfy their duty to mitigate damages. *See Wilson v. Ruhl*, 277 Md. 607, 356 A.2d 544 (1976). The Commission notes that the case cited by Respondents' counsel, *Millison v. Clarke*, 287 Md. 420, 413 A.2d 198 1980, involves a commercial lease not a residential lease. However, *Millison* still holds that a landlord must exercise reasonable diligence in an effort to obtain a new tenant. *Millison* 287 Md. at 207. The key point is that an effort must be made to obtain a new tenant not a new owner of the property, which is all the Respondents attempted to do. The Commission understands that it may have been difficult for the Respondents to find a tenant to rent the Property for one month, but that did not excuse their duty to mitigate the damage and attempt to re-rent the Property as required by law. If the Respondents had listed the Property for "sale or rent," they would have met their duty to mitigate as held by the court in *Wilson*.

3. Therefore, based on the above, the Commission finds that because the Property was listed for "sale" only, the Respondents failed to properly mitigate the damages caused by the Complainants' abandonment of the Property and termination of occupancy before the end of the term. Thus, the Complainants do not owe rent, in the amount of \$2,250.00, to the Respondents for the month of June 2004.

4. The Respondents caused a defective tenancy by failing to provide the Complainants with a receipt for their payment of security deposit that contained the disclosures and other information required by § 8-203.1(a) of the State Code.

5. The Respondents 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 of the State Code.

6. Pursuant to § 8-203(e) of the State Code, interest accrues on a security deposit at the rate of 4% per year, in 6-month intervals of 2%. In this case, the Complainants were tenants in the Property for 11 months, which is more than 6 months, but less than 12 months, therefore, their deposit accrued interest in the amount of 2%, \$44.00.

7. The Complainants are not entitled to treble damages or attorneys fees. There is no evidence in the record that the withholding of the Complainants' security deposit was unreasonable or in bad faith. Nor does the Commission find that the Respondents withheld the security deposit for any unconscionable or malicious reason. Therefore, the Complainants' request for a three-fold penalty of the withheld amount of their security deposit plus attorney's fees is DENIED.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders the Respondents to pay the Complainants \$2,244.00, which sum represents their security deposit of \$2,200.00 plus \$44.00 interest.

Commissioner Kwaku Ofori, Commissioner Christopher Toven, and Commissioner Tina Smith Nelson, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondents, James and Pamela Finlay, 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 Order, a check, made payable to Heidi Downing, Julie Hussion, Megan McIntosh, and Heather Ward, in the full amount of \$2,244.00.

The Respondents, James and Pamela Finlay, 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 Class A civil citation and \$500.00 civil fine, 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 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, she must post a bond with the Circuit Court in the amount of the award (\$2,244.00) if they seeks a stay of enforcement of this Order.

Tina Smith Nelson, Panel Chairperson

Commission on Landlord-Tenant Affairs