

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

In the matter of:

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Avis Johns

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Complainant

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V.

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Case No. 28378

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Majid Danesh

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Respondent

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Rental Facility: 3543 Bruton Parish Way, Silver Spring, MD

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 ("County Code"), and the Commission having considered the testimony and evidence of record, it is therefore, this 21st day of September, 2007, found, determined, and ordered as follows:

BACKGROUND

On February 26, 2007, Avis Johns ("Complainant"), former tenant at 3543 Bruton Parish Way, Silver Spring, Maryland ("Property"), an unlicensed single-family rental facility in Montgomery County, Maryland, filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs ("Department"), in which she alleged that her former landlord, Majid Danesh ("Respondent"), owner of the Property: (1) without a reasonable basis failed to refund any portion of her \$1,395.00 security deposit plus accrued interest after the termination of her tenancy, in violation of § 8-203(e) of the Real Property Article, Annotated Code of Maryland, 1999, as amended ("State Code"); (2) assessed unjust charges against her security deposit after the termination of her tenancy, in violation of § 8-203(g) of the State Code; and (3) failed to refund a rent credit of \$195.45 after the termination of her tenancy. The Complainant is seeking the return of her \$1,395.00 security deposit plus accrued interest, the rent credit in the amount of \$195.45, and a penalty of up to threefold the amount of the security deposit that was unreasonably withheld.

The Respondent contends that: (1) he had properly issued the Complainant an itemized list of damages within 45-days of the termination of her tenancy; and (2) the security deposit plus accrued interest and rent credit were properly withheld due to damage the Complainant caused to the Property that was in excess of ordinary wear and tear and an unpaid utility bill.

The Complainant is seeking an Order from the Commission that the Respondent refund her entire \$1,395.00 security deposit and accrued interest in the amount of \$20.93, plus a rent credit in the amount of \$194.45. In addition, the Complainant asserts that the Respondent's withholding of her entire security deposit plus accrued interest was unreasonable, egregious and in bad faith, and therefore she is seeking a penalty of up to threefold the withheld amount of her security deposit plus accrued interest.

After determining that Case No. 28378 was not susceptible to conciliation, the Department referred this matter to the Commission for review, and on May 1, 2007, the Commission voted to conduct a public hearing on June 12, 2007. The hearing was subsequently rescheduled and the matter of Case No. 28378, Avis Johns v. Majid Danesh, commenced on July 17, 2007, and concluded on that date.

The record reflects that the Complainant and the Respondent were given proper notice of the hearing date and time. Present and offering evidence were the Complainant, Avis Johns and the Respondent, Majid Danesh, who was represented by attorney Richard Lawlor, and three witnesses called to testify by the Commission, the Department's Investigator Jane Blackwell, Esmond Jemott, Jemott Enterprise Inc., and Joseph Hannickel, of JD's Chem Dry I.

The Commission entered into the record of the hearing the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Commission also entered into the record seven (7) exhibits offered by the Respondent: (1) a series of photographs identified as Respondent Exhibit Nos. 1a – 1qq; (2) a photocopy of a Chevy Chase Bank Statement of Account, dated January 5, 2007 reflecting check #2464 payable to WSSC in the amount of \$264.96, identified as Respondent's Exhibit No. 2; (3) two receipts from The Home Depot – the first in the amount of \$912.37, dated November 27, 2006, and the second in the amount of \$255.14, dated December 13, 2006 – collectively identified as Respondent's Exhibit No. 3; (4) a photograph of wood flooring, identified as Respondent's Exhibit No. 4; (5) a second photograph of wood flooring, identified as Respondent's Exhibit No. 5; (6) a third photograph of wood flooring, identified as Respondent's Exhibit No. 6; and (7) a copy of a five page Special Services Customer Invoice (#245880) and Receipt in the amount of \$1,267.93, for carpet replacement, from The Home Depot, dated December 12, 2006, identified as Respondent's Exhibit No. 7.

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 evidence of record, the Commission makes the following findings of fact:

1. On February 17, 2006, the Complainant and the Respondent signed a one-year lease agreement ("Lease") for the rental of the Property, which commenced on February 17, 2006, and was due to expire on February 16, 2007.

2. On February 17, 2006, the Complainant paid the Respondent a security deposit in the amount of \$1,395.00, which amount is receipted in the Lease. No other written receipt was issued by the Respondent.
3. The Commission finds that the February 17, 2006, security deposit receipt provided by the Respondent in the Lease did not contain any of the disclosures and other information required by § 8-203.1 of the State Code advising the Complainant: (1) of the Complainant's right to have the Property inspected by the Respondent in her presence for the purpose of making a written list of damages that exist at the commencement of tenancy; (2) of Complainant's right to be present when the Respondent inspected the Property at the end of tenancy in order to determine if any damage was done to the Property; and (3) that failure of the Respondent to comply with the security deposit law may result in the Respondent being liable to the Complainant for a penalty of up to 3 times the security deposit withheld plus reasonable attorney's fees.
4. The Commission finds that the Respondent failed to notify the Complainant in writing at the time of her payment of the security deposit of her right to be present after the termination of the tenancy when the Respondent or the Respondent's agent inspected the Property to determine if any damage in excess of ordinary wear and tear had been caused by the Complainant, or the procedure for making such a request, as required by § 8-203(f)(1)(vi) of the State Code. Therefore, the Commission finds that based on his failure to advise the Complainant of her rights in writing regarding inspection of the Property, pursuant to § 8-203(f)(1)(vii) of the State Code, the Respondent has forfeited his right to withhold any portion of the Complainant's security deposit for damages.
5. The Commission finds that the Complainant and the Respondent mutually agreed to prematurely terminate the Lease and the Complainant's tenancy on October 31, 2006, and that the Complainant vacated the Property as of October 31, 2006, and owes no additional rent to the Respondent beyond that date.
6. At the time the Complainant vacated, October 31, 2006, she had overpaid rent to the Respondent in the amount of \$194.45. Therefore the Complainant is entitled to a rent credit in the amount of \$194.45. The Respondent acknowledged this fact at the hearing.
7. By a letter dated December 13, 2006, forty-three (43) days after the termination of the Complainant's tenancy, the Respondent sent her an accounting of the disposition of her security deposit itemized as follows:

Security deposit	\$1,395.00
Interest	20.93
Rent Credit	<u>194.45</u>
Total Credit	\$1,610.38

Cleaning Expenses	\$90.00
Materials and Supplies from Home Depot	1,115.54
Electric Dryer	341.23
Contractor Services	600.00
Carpet Cleaning	347.25

Water and Sewer Bill	<u>264.96</u>
Total Deductions	\$2,758.98

8. The Complainant left the carpet in the Property in an unclean condition at the time she vacated, which constitutes damage in excess of ordinary wear and tear, and the Respondent incurred actual expense, in the amount of \$267.25 to clean it. This finding is supported by the credible testimony of Commission's witness Joe Hannickel, JD's Chem-Dry I. The Commission also finds that the Respondent's actual cost incurred for carpet cleaning was \$267.25, and not \$347.25 as represented in the December 13, 2006 notice to the Complainant.
9. Regarding the Respondent's assessment of \$90.00 against the Complainant's security deposit for "Cleaning Expenses," the Commission finds that the Complainant did not leave the Property in an unclean condition, other than the carpet, at the time she vacated, and although the Respondent did incur \$90.00 in cleaning costs, these costs represent normal cleaning at turnover, and are not the result of the Property being unclean.
10. The Commission finds that although the Complainant left the carpet in an unclean condition and is therefore liable for the cost incurred by the Respondent to clean it, she is not liable for the replacement cost of the carpet. Furthermore, the Respondent failed to provide sufficient evidence regarding the age of the carpet at the time the Complainant vacated and failed to include the carpet replacement cost in the itemized list of damages sent to the Complainant on December 13, 2006. Therefore, the cost of the replacement of the carpet is disallowed.
11. The Complainant did not damage the electric clothes dryer in the Property during her tenancy. Furthermore, based on the testimony of the Respondent, the dryer was at least 17 years old at the time the Complainant vacated. Therefore, the cost of the replacement of the electric clothes dryer, \$341.23, charged against the Complainant's security deposit is disallowed.
12. The Complainant failed to pay the final water bill for the Property, in the amount of \$264.96, which was her responsibility pursuant to the terms and conditions of the Lease. The Commission further finds that the Respondent paid the Washington Suburban Sanitary Commission the sum \$264.96, which amount represents an actual cost incurred by the Respondent due to the Complainant's breach of the Lease.
13. The Complainant damaged one 30" door and one bi-fold door in the Property during her tenancy, which constitutes damage in excess of ordinary wear and tear. The Commission further finds that the Respondent incurred actual expense to replace the damaged doors in the amount of \$384.00 — \$184.00 for materials (\$119.00 for the 30" door and \$65.00 for the bi-fold door) and \$200.00 labor. The amount of the replacement costs is based on the credible testimony of Commission's witness Esmond Jemott, owner of Jemott Enterprises Inc. The Commission also finds that the actual amount charged by Mr. Jemott for labor was \$200.00, not \$600.00 as represented in the Respondent's December 13, 2006 notice to the Complainant.
14. The Commission finds that the Respondent failed to provide sufficient evidence to establish that the Complainant was responsible for the costs the Respondent incurred to

purchase supplies and materials from Home Depot. Therefore, the cost incurred by the Respondent for these supplies and materials, \$1,115.54, is disallowed.

15. The Respondent assessed against the Complainant's security deposit costs incurred to make repairs that were not in excess of ordinary wear and tear, which constitutes a violation of § 8-203(f)(1) of the State Code, and has created a defective tenancy.
16. The Respondent assessed against the Complainant's security deposit costs that were never incurred or costs that were inflated or fabricated, which constitutes a violation of § 8-203(f)(1) of the State Code, and has created a defective tenancy.

CONCLUSIONS OF LAW

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

1. Pursuant to § 8-203.1, "Security deposit receipt," of the State Code, a landlord must provide a tenant who pays a security deposit a written receipt that contains a variety of disclosures and other information. The Commission's finding that the Respondent failed to provide the Complainant with a receipt that advised her: (1) of her right to have the Property inspected for the purpose of making a written list of damages at the commencement of tenancy; (2) her right to be present when the Respondent inspected the Property at the end of the tenancy in order to determine if damage was done; and (3) that failure by the Respondent to comply with the requirements of § 8-203.1 could result in the Respondent being liable for a penalty of up to 3 times the amount of the security deposit withheld plus reasonable attorneys fees constitutes a violation of § 8-203.1 of the State Code, has caused a defective tenancy.
2. Pursuant to § 8-203(f)(1)(vi) of the State Code, the tenant shall be advised in writing at the time of the tenant's payment of the security deposit, of the tenant's right under this subsection, to be present at the inspection of the premises to determine if any damage was done to the premises. The Commission's finding that the Respondent failed to notify the Complainant in writing at the time of her payment of the security deposit of her right to be present at the inspection of the premises to determine if any damage was done to the Property constitutes a violation of § 8-203(f)(1)(ii) and (vi), of the State Code, has caused a defective tenancy.
3. Pursuant to § 8-203(f)(1)(vii) of the State Code, failure by the Respondent to comply with the requirements § 8-203(f)(1)(ii) and (vi) of the State Code, forfeits the right of the Respondent to withhold any part of the Complainant's security deposit for damages. Based on his failure to comply with the requirements of § 8-203(f)(1)(vi), of the State Code, the Respondent has forfeited his right to withhold any portion of the Complainant's security deposit for damage in excess of ordinary wear and tear (carpet cleaning, \$267.25 and damaged doors, \$384.00), or damage which was the result of a breach of the Lease (final water bill, \$264.96).
4. The Respondent sent an itemized list of damages together with a statement of costs incurred to repair the damage to the Complainant, within forty-five (45) days after the termination of her tenancy, as required by § 8-203(g)(1) of the State Code.

5. The Respondent correctly calculated the amount of simple interest that had accrued on the Complainant's security deposit, as required by § 8-203(e)(1) and (2) of the State Code.
6. The Respondent failed to substantiate that he incurred actual costs for many of the damages claimed against the Complainant's security deposit. The Respondent's assessment of \$1,842.77 against the Complainant's security deposit to repair damage which was not established to be as a result of damage in excess of ordinary wear and tear as a result of the Complainant's tenancy or for which costs were not actually incurred, constitutes a violation of § 8-203(f)(1)(i), § 8-203(f)(2), and § 8-203 (g)(1) of the State Code, and caused a defective tenancy.
7. The Commission has determined that the Respondent's conduct does not rise to the level of bad faith or egregiousness necessary to award a penalty, and therefore, Complainant's request for such an award is denied.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondent must pay the Complainant \$1,610.38, which sum represents the Complainant's security deposit (\$1,395.00) plus accrued interest (\$20.93), plus rent credit (\$194.45).

Commissioner Denise Hawkins, Commissioner Deanna Stewart, and Commissioner Matthew Moore, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondent, Majid Danesh, must forward to the Office of Landlord-Tenant Affairs, Attention: Michael T. Denney, Administrator, 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 Avis Johns, in the full amount of \$1,610.38.

The Respondent, Majid Danesh, is 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 Respondent has 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 pursuant to Section 29-48(c) of the County Code.

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 Respondent

choose to appeal the Commission's Order, he must post a bond with the Circuit Court in the amount of the award (\$1,610.38) if he seeks a stay of enforcement of this Order.

Matthew Moore, Panel Chair
Commission on Landlord-Tenant Affairs