

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

Clarence Williams	*	
	*	
Complainant	*	
	*	
V.	*	Case No. 32592
	*	Investigator: Maureen Harzinski
Hla Hla Shih	*	
Respondent	*	

Rental Facility: 930 Wayne Avenue, #1106, Silver Spring, MD (Rental License 59398)

DECISION AND ORDER

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland (“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 9th day of November, 2011, found, determined, and ordered, as follows:

BACKGROUND

On June 21, 2011, Clarence Williams (“Complainant”), former tenant at 930 Wayne Avenue, #1106, Silver Spring, MD (“Property”), a licensed rental property 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 he alleged that Hla Hla Shih (“Respondent”), owner of the Property: (1) assessed unjust charges for carpet damage against his security deposit in violation of Section 8-203, *Security Deposits*, of the Real Property Article, Annotated Code of Maryland, as amended (“Real Property Article”); (2) failed to send him an itemized list of damages, together with a statement of the costs actually incurred to repair that damage, within the 45 days after the termination of his tenancy, in violation of Section 8-203 (g)(1) of the Real Property Article, and (3) failed to credit his security deposit with accrued interest, in violation of Section 8-203(e)(1) and (2) of the Real Property Article.

The Complainant is seeking a refund of \$243.50 (deduction for damage to carpeting in the amount of \$200.00, and interest on the security deposit in the amount of \$43.50) and a penalty of up to 3 times the unreasonably withheld amount.

The Respondent contends that: (1) the Complainant damaged the carpet in excess of ordinary wear and tear; and (2) that the Complainant owes her a late fee in the amount of \$72.50 for October 2010 rent.

After determining that Case No. 32592 was not susceptible to conciliation, the Department referred Case No. 32592 to the Commission for its review, and on September 6, 2011, the Commission voted to hold a public hearing on October 18, 2011. The public hearing in the matter of Clarence Williams v. Hla Hla Shih, relative to Case No. 32592, commenced on October 18, 2011, 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 sworn at the hearing and presenting evidence were Complainant Clarence Williams and Respondent Hla Hla Shih.

Without objection, the Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Commission also entered into evidence a list of Complainant's rental payments offered by the Complainant and marked as Complainant's Exhibit No. 1.

FINDINGS OF FACT

Based on the testimony and evidence of record, the Commission makes the following Findings of Fact:

1. On April 12, 2010, the Complainant and the Respondent signed a one-year and 19 day lease agreement ("Lease") for the rental of the Property, which commenced on April 12, 2009, and ended on April 30, 2011.

2. At the commencement of the tenancy, the Complainant paid a security deposit in the amount of \$1,450.00, the receipt for which is included in the Lease.

3. The Commission finds that the Complainant vacated the Property on or about April 23, 2011, having paid rent in full through the end of April 2011.

4. The Commission finds that in an email dated May 31, 2011, the Respondent stated:

I hope you had a great holiday weekend and that you are settled in your new home. I am sending out your deposit minus the gas bill (\$52.20), water bill (\$150.00), and the damaged carpet-stains will not come out (\$200.00). The total check will be \$1,047.00.

5. The Commission finds that the Respondent did not send an itemized list of damages by first class mail to the Complainant within 45 days after the termination of Complainant's tenancy.

6. The Commission finds that the Complainant received a check in the amount of \$1047.80 from the Respondent in early June 2011.

7. The Commission finds that the Respondent failed to credit the Complainant's \$1450.00 security deposit with interest which accrued during his tenancy from April 12, 2010, to April 30, 2011.

8. The Commission finds that the Respondent did not incur costs to repair the damaged carpet.

9. The Commission finds that the Respondent only raised the issue of a late fee after the Complainant sent an email to the Respondent disputing charges for carpeting and noting Respondent's failure to account for interest on his security deposit.

10. Paragraph 21 of the Lease states:

Late Charge. In the event that any payment required to be paid by Tenant hereunder is not made within three (3) days of when due, Tenant shall pay to Landlord, in addition to such payment or other charges due hereunder, a "late fee" in the amount of 5% or seventy two dollars and fifty cents (\$72.50).

11. The Commission finds that the Lease does not contain a provision requiring a minimum of 10 days before late fees may be assessed.

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 Respondent failed to send an itemized list of damages to the Complainant by first class mail within 45 days after the termination of his tenancy. Section 8-203(g)(1) and (2) of the Real Property Article states:

(1) If any portion of the security deposit is withheld, the landlord shall present by first- class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under subsection (f)(1) of this section together with a statement of the cost actually incurred; and, (2) If the landlord fails to comply with this requirement, the landlord forfeits the right to withhold any part of the security deposit for damages.

Therefore, pursuant to Sections 8-203(g)(1) and (2) of the Real Property Article, the Respondent has forfeited her right to withhold any portion of the Complainant's security deposit for damages.

2. The Respondent did not incur any costs for carpet damage. Therefore, pursuant to Sections 8-203(g)(1) and (2) of the Real Property Article, the Respondent is not entitled to withhold any of the security deposit for carpet damage.

3. The Commission concludes that the Respondent's failure to pay the Complainant \$43.50 interest on his security deposit constitutes a violation of Section 8-203(e)(1) of the Real Property Article.

4. The Commission concludes that the Lease provision which states that the Respondent may collect a late fee 3 days after the rent payment due date constitutes a violation of Section 29-27 of the Montgomery County Code, as amended. Section 29-27(l) of the Montgomery County Code states:

Each lease for rental housing located in the County must:

(l) Require a minimum of 10 days before late fees may be charged.

Therefore the Commission concludes that the Respondent is not entitled to collect late fees from the Complainant.

5. The Commission concludes that the Respondent's failure to handle and dispose of the Complainant's security deposit in accordance with the requirements of the applicable provisions of Section 8-203, "Security deposits," of the Real Property Article, has caused a defective tenancy.

6. The Commission concludes that the Respondent's conduct does not rise to the level of bad faith or egregiousness necessary to award a penalty, and therefore, the 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 **\$243.50**, which sum represents the portion of the Complainant's security deposit withheld (\$200.00) plus accrued interest (\$43.50).

Commissioner Tangela Bullock, Commissioner Kenneth Lemberg, and Commissioner David Greenstein, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondent Hla Hla Shih, 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 Clarence Williams, in the amount of \$243.50.

The Respondent 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 Class A civil citations and civil fines of \$500.00 each, 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 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 Respondent choose to appeal the Commission's Order, she must post a bond with the Circuit Court in the amount of the award (**\$243.50**) if a stay of enforcement of this Order is sought.

David Greenstein, Panel Chairperson
Commission on Landlord-Tenant Affairs

S:\Files\recurring\Housing\Olta\Harzinski, Maureen\Hearings\32592 Williams v Shih\32592 Decision and Order.doc