

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

Mahin Tabrizian	*	
	*	
Complainant	*	
	*	
V.	*	Case No. 32598
	*	Investigator: Maureen Harzinski
Joan A. Estrada Family Trust	*	
	*	
Respondent	*	

Rental Facility: 5500 Friendship Blvd, Apt. 1607 N, Chevy Chase, MD (Rental License 22128)

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 (“County Code”), and the Commission having considered the testimony and evidence of record, it is therefore, this 20th day of December, 2011, found, determined, and ordered, as follows:

BACKGROUND

On June 21, 2011, Mahin Tabrizian (“Complainant”), former tenant at 5500 Friendship Blvd., Apt. 1607 N, Chevy Chase, Maryland (“Property”), a licensed rental property in Montgomery County, Maryland, filed a complaint with the Office of Landlord-Tenant Affairs in the Department of Housing and Community Affairs (“Department”), in which she alleged that Joan Estrada, on behalf of Joan A. Estrada Family Trust (collectively hereinafter “Respondent”), assessed unjust charges against her security deposit after the termination of her tenancy, in violation of § 8-203, *Security Deposits*, of the Real Property Article, Annotated Code of Maryland, as amended (“Real Property Article”).

The Complainant asserted that she did not damage the Property in excess of ordinary wear and tear during her tenancy and that the Respondent had no reasonable basis to withhold any portion of her security deposit plus accrued interest.

The Respondent contended that the Complainant damaged the Property in excess of ordinary wear and tear during her tenancy, and that the amount withheld from the security deposit was for actual cost incurred to repair those damages.

The Complainant is seeking an Order from the Commission for the Respondent to refund the balance of her security deposit plus accrued interest and a penalty of up to three times that amount based on the Respondent's unreasonable withholding from her security deposit plus interest.

After determining that Case No. 32598 was not susceptible to conciliation, the Department referred Case No. 32598 to the Commission for its review, and on September 6, 2011, the Commission voted to hold a public hearing on November 16, 2011. The public hearing in the matter of Mahin Tabrizian v. Joan A. Estrada Family Trust, relative to Case No. 32598, commenced on November 16, 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 was Complainant Mahin Tabrizian. The Respondent Joan Estrada was represented by Charles S. Rand, Esq. The Respondent did not attend the hearing.

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 the Deed to the Property identified as Commission's Exhibit No. 2.

FINDINGS OF FACT

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

1. On February 23, 2008, and February 24, 2008, the Complainant and Respondent, respectively, signed a one-year lease agreement ("Lease") for the rental of the Property, which commenced on April 1, 2008, and ended on March 31, 2009, for a monthly rent of \$950.00. Thereafter, the Complainant became a month-to-month tenant.

2. The Complainant paid a security deposit in the amount of \$1,900.00, the receipt for which is included in the Lease.

3. On September 4, 2010, the Complainant gave the Respondent a notice to vacate which stated that she would be vacating on or before October 31, 2010. The Complainant vacated on October 30, 2010, having paid rent for the month of October 2010.

4. On November 17, 2010, the Respondent mailed by first class mail to the Complainant a check in the amount \$364.91 and an itemized list of damages. The Commission finds that the Respondent sent the Complainant an itemized list of damages within 45 days of the termination of the tenancy.

5. Based upon the Complainant's testimony and the photographs submitted by the Complainant and included in Commission's Exhibit No. 1, the Commission finds that the Complainant did not damage the Property in excess of ordinary wear and tear.

6. The Respondent's attorney did not provide any probative evidence in support of her claims that the Complainant damaged the Property in excess of ordinary wear and tear. The Respondent also failed to provide any evidence of the age of items that were replaced.

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 Commission concludes that the Respondent's deductions in the amount of \$1,744.99 from the Complainant's security deposit were for costs that were not in excess of ordinary wear and tear and therefore constitutes a violation of § 8-203(f)(1)(i), and § 8-203(f)(2) of the Real Property Article, and caused a defective tenancy.

2. Although the Commission concludes that the Respondent unreasonably withheld a portion of the Complainant's security deposit in violation of § 8-203(e)(4) of the Real Property Article, to award a penalty, as requested by the Complainant, pursuant to § 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Respondent's conduct in wrongfully withholding all or part of the Complainant's security deposit and whether or not the Respondent acted in bad faith or has a prior history of wrongful withholding of a security deposit. Based on the evidence, the Commission concludes that the Respondent's conduct was not in bad faith or egregious and that the Respondent does not have a prior history of wrongful withholding. 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 **\$1,677.59**, which sum represents the Complainant's security deposit of \$1,900.00 plus accrued interest of \$142.50 minus the amount already paid to Complainant, \$364.91.

Commissioner Kenneth Lemberg, Commissioner Jan Patterson, and Commissioner Nancy Cohen, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondent Joan A. Estrada Family Trust 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 Mahin Tabrizian, in the amount of **\$1,677.59**.

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, he must post a bond with the Circuit Court in the amount of the award (**\$1,677.59**) if a stay of enforcement of this Order is sought.

Nancy Cohen, Panel Chairperson
Commission on Landlord-Tenant Affairs

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