

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

In the matter of:	*	
	*	
Ekechi Greenidge	*	
	*	
Complainant	*	
	*	Case No. 33616
V.	*	
	*	
Thelma Thompson	*	
	*	
Respondent	*	

Rental Facility: 1121 University Boulevard West, #1305, Silver Spring, MD (Rental Facility License No. 71696)

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 25th day of October 2013, found, determined, and ordered as follows:

BACKGROUND

On December 28, 2012, Ekechi Greenidge ("Complainant"), former tenant at 1121 University Blvd W, #1305, Silver Spring, MD ("Condominium"), a licensed multi-family unit, 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 landlord, Thelma Thompson ("Respondent"), owner of the Condominium, through her Agent, Angel Williams of AEW Property Management Group ("Agent"): (1) failed to make requested/required repairs in a timely and professional manner, in violation of Section 29-30 (a)(3) of the Montgomery County Code, 2001, as amended ("County Code"); (2) failed to house her during the repair for a severe leak in the wall which rendered the unit uninhabitable in December 2012; (3) failed to reimburse her for the cost of belongings she had to discard as a result of the contractors' failure to protect her belongings during repairs in December 2012; (4) failed to assure that the contractor cleaned the unit properly after repairs were completed, making it unsafe for her and her family to reside in the Condominium; (5) failed to return any portion of her security deposit plus accrued interest after the termination of her tenancy, in violation of Section 8-203 (f)(1), (g)(1) of the Real Property Article of the Maryland Code (1974, 2003 Repl. Vol., 2008 Supp.) ("Real Property Article"); and (6) failed to send her an itemized list of damages claimed against her security deposit within 45 days after the termination of her tenancy, in violation of Section 8-203 (e)(1) of the Real Property Article.

In response to the Complainant's allegations, the Respondent states that: (1) while there was a problem with her prior management company, she made arrangements and had repairs started as soon as she received the Complainant's requests for repairs; (2) there is no evidence to support the Complainant's allegation that the Condominium was unsafe for her or her family; and (3) no refund of security deposit or other funds are due back to the Complainant because she vacated without proper notice or legitimate reason.

After determining that the subject complaint was not susceptible to conciliation, the Department duly referred this case to the Commission for its review, and on July 9, 2013, the Commission accepted jurisdiction of the case and scheduled a public hearing for Monday, September 9, 2013. The Respondent requested a continuance based on a prior commitment on that date which request was granted by the Commission. The hearing was continued to September 16, 2013. The public hearing in the matter of *Ekechi Greenidge v. Thelma Thompson*, relative to Case No. 33616 commenced on September 16, 2013, 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 at the hearing and presenting testimony and evidence were Complainant Ekechi Greenidge and two witnesses, Cynthia Jones and Caroline Jones, and Respondent Thelma Thompson, her daughter and the co-owner of the Condominium, Lisa Thompson, and her Agent, Angel Williams.

Without objection from the Complainant or the Respondent, the Commission entered into the record of the hearing the case file compiled by the Department, identified as Commission's Exhibit No. 1, a telephone log of all calls made and or/received regarding this complaint, identified as Complainant's Exhibit #1; and a mortgage statement, floor plan for the Condominium and a picture of the building, identified as Respondent's Exhibit #1.

FINDINGS OF FACT

1. On or about February 1, 2012, the Complainant and then Agent for the Respondent, Sherry Cooper ("former Agent"), signed a one year lease agreement ("Lease") for the rental of the Condominium which commenced on May 1, 2012 and was due to expire on April 30, 2014.
2. On or about February 1, 2012, the Complainant paid a security deposit of \$1,800.00 to former Agent Sherri Cooper, which was receipted in the Lease.
3. During the entire tenancy, the Complainant was a participant in the Housing Opportunities Commission's ("HOC") Housing Choice Voucher program.
4. The Complainant and Respondent acknowledge that the Complainant's toddler daughter, who was an occupant during the entire tenancy, had severe medical and respiratory problems and used oxygen on a 24 hour basis.
5. On or about May 1, 2012, the Complainant moved into the Condominium.
6. The Complainant and Respondent acknowledge that during the period from July 1, 2012 through September 30, 2012, the Complainant experienced numerous maintenance issues that were not properly addressed by the Respondent's former Agent.

7. In September 2012, the Respondent terminated the employment of her former Agent and hired Angel Williams (“Agent”) as her new Agent.

8. The Commission finds that based on the maintenance and management problems, the Respondent’s Agent, Ms. Williams, did not charge the Complainant for her portion of the rent during the period July 1, 2012 through September 30, 2012, and the Respondent agreed to this arrangement.

9. On or about September 14, 2012, the Complainant and Respondent entered into a second lease agreement (“Lease 2”), which commenced on September 1, 2012 and was due to expire on August 31, 2014. Lease 2 does not acknowledge payment of the \$1,800.00 security deposit.

10. The Commission finds credible the Respondent’s testimony that the former Agent did not give her the Complainant’s \$1,800.00 security deposit after it was received.

11. The Commission finds credible the Complainant’s testimony that on December 5, 2012, the Complainant reported a leak from the ceiling in her son’s bedroom to the property manager with instructions to contact her before any repair work was done. The Commissioner additionally finds as credible the Complainant’s testimony that the Respondent was aware that her daughter’s medical equipment was there and the child was extremely ill.

12. The Commission finds that during the Complainant’s entire tenancy, there was an “Oxygen in Use...” sign on her door due to her daughter’s delicate health condition.

13. On December 5, 2012, in response to the Agent’s request, Servpro came to the Condominium to investigate and correct any problems associated with the reported leak.

14. The Commission finds that neither Servpro nor the Respondent’s Agent contacted the Complainant before the commencement of any repair work.

15. The Commission finds that Servpro cut the drywall and found mold growing inside the wall. Servpro indicated that this portion of the wall was treated, the mold was removed and the drywall was replaced.

16. The Commission finds that there is no probative evidence to show that Servpro covered the Complainant’s belongings during the repair or took any care to shelter the Complainant’s daughter’s medical equipment during the repair process; thereby, rendering the medical equipment unusable, and the Condominium uninhabitable for the child.

17. The Commission finds credible the Complainant’s testimony that she was advised by her daughter’s healthcare provider that her daughter could not be in the environment of the Condominium after the December 5, 2012 repairs because of her chronic liver disease; and that the medical equipment could no longer be used.

18. After the December 5, 2012 repair, the Complainant’s daughter was hospitalized and her other children stayed with friends. The Complainant and her family did not occupy the Condominium after December 5, 2012.

19. On or about December 13, 2012, the Complainant informed the Respondent of her intention to vacate the Condominium by December 31, 2012 because of the contamination of her belongings, the presence of mold, and the danger to her daughter's health.

20. By correspondence dated December 13, 2012, the Respondent's Agent acknowledged the Complainant's request to vacate and said she would honor it if the Complainant : 1) paid rent in full through December 2012; 2) completely emptied and cleaned the property; and 3) forfeited her security deposit.

21. HOC conducted inspections of the Condominium on December 10, 2012 and December 14, 2012 and the Condominium failed both inspections based on incomplete repairs.

22. On December 20, 2012, ESI Environmental Solutions, Inc issued a report, per the Respondent's request, which stated "...These lab results indicated elevated mold conditions do not exist and the species identified at these levels should not pose a health or environmental risk."

23. The Commission finds that ESI's report contains a statement that "The scope of this work for this project did not include an assessment of other environmental conditions which could exist on the property....No warranty is made..." The commission further finds that ESI's Analysis does not take into account the presence of a child with severe and chronic health issues and sensitivities to mold among other environmental factors.

24. The Commission finds that the Complainant's inability to reside in the Condominium after Servpro's work resulted in the constructive eviction of the Complainant as of December 5, 2012.

25. The Commission finds that the Complainant's tenancy terminated effective December 5, 2012, and that based on the testimony, no further rental payments are owed by the Complainant to the Respondent.

26. The Commission finds credible the Complainant's and Respondent's testimony that it was agreed that the Complainant would not be held responsible for her portion of December 2012 rent and that she should use the December 2012 rent to take care of her family. (Transcript pages 16 and 72).

27. The Complainant officially vacated the Condominium on December 28, 2012 and returned her keys on that date. She did not pay her portion of the rent (\$308.00) for December 2012.

28. The Respondent's Agent acknowledges that the Condominium was left in clean condition with no damage in excess of ordinary wear and tear.

29. The Commission finds that the Respondent failed to send the Complainant, at her last known address, an itemized list of damages claimed against the security deposit together with a statement of the costs actually incurred to repair that damage.

30. The Commission finds that the Complainant incurred costs of \$1,060.45 (\$660.45 for movers and \$400.00 security deposit) to move from the Condominium to her new residence.

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 had a duty to take reasonable measures to protect against foreseeable dangers to her tenant. *See, e.g., Evergreen Assocs. LLC v. Crawford*, 2013 Md. App. LEXIS 125, 12 (Md. Ct. Spec. App. Sept. 10, 2013) (noting that under general principles of negligence, a landlord has a duty to exercise reasonable care for a tenant's safety). In the Commission's view, the landlord could easily have fulfilled this duty by notifying the Complainant, per her request, before any repairs took place, given the on-site presence of medical equipment belonging to the Complainant's daughter and her delicate health condition, of which all parties were aware. This failure on the part of the landlord resulted in the Complainant having to replace the equipment after it was contaminated and no longer usable. The Respondent's failure to take care to protect this equipment has caused a defective tenancy.

2. The Commission concludes that neither the Respondent nor the Respondent's contractor or Agent provided any probative evidence that any care was taken to cover the Complainant's belongings or the Complainant's daughter's medical equipment during the repair of the leak, in violation of Section 29-30(a)(3) of the County Code. The Respondent's failure to exercise ordinary care to protect the Complainant's belongings has caused a defective tenancy.

3. The Commission concludes that the Respondent's failure to provide a clean, safe and sanitary space for the Complaint's family after the repair of the leak rendered them homeless thereby resulting in a constructive eviction of the Complainant's family, in violation of Section 2932 (c) of the County Code.

4. The Commission concludes that the Respondent is liable to the Complainant for the return of the security deposit. The Respondent failed to send the Complainant, within 45 days after the termination of her tenancy to her last known address, an itemized list of damages claimed against the deposit together with a statement of costs actually incurred per Section 8-203 (e)(1) of the Real Property Article. The Respondent's failure to properly handle and dispose of the Complainant's security deposit has caused a defective tenancy.

5. In response to the Complainant's request for reimbursement for her lost belongings, the Commission believes that the Complainant is entitled to \$1,060.45 in damages as a result of the Respondent's failure to exercise ordinary care which resulted in the Complainant incurring \$660.45 to move her family's belongings to her new residence and \$400.00 she had to pay for the security deposit in the new residence.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders the Respondent to pay the Complainant **\$2,887.45**, which sum represents the Complainant's security deposit (\$1,800.00), plus accrued interest (\$27.00) and \$1,060.45 in damages.

Commissioner Robyn Jones, Commissioner Mora Rogers and Commissioner Dave Goldberg, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondent, Thelma Thompson, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within thirty (30) calendar days from the date of this Decision and Order, a check made payable to Ekechi Greenidge in the full amount of **\$2,887.45**.

The Respondent, Thelma Thompson, is hereby notified that Section 29-48 of the County Code declares that failure to comply with this 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 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 from 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, a bond must be posted with the Circuit Court in the amount of the award (**\$2,887.45**) if a stay of enforcement of this Decision and Order is sought.

Dave Goldberg, Panel Chairperson
Commission on Landlord-Tenant Affairs