

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

In the matter of:	*	
	*	
Tanya Twyman	*	
	*	
Complainant	*	
	*	
V.	*	Case No. 33940
	*	
Maya Nimo	*	
and	*	
Kwami Nimo	*	
	*	
Respondents	*	

Single Family: 3 Childress Court, Burtonsville, Maryland (Rental Facility License No. 7508)

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 2nd day of June, 2014, found, determined, and ordered as follows:

BACKGROUND

On July 2, 2013, Tanya Twyman (“Complainant”), former tenant at 3 Childress Court, Burtonsville, Maryland (“Property”), a licensed 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 Maya Nimo and Kwami Nimo (“Respondents”), owners of the Property: (1) failed to refund any portion of her \$1,750.00 security deposit plus accrued interest within 45 days after the termination of her tenancy, in violation of § 8-203(e)(1) of the Real Property Article, Annotated Code of Maryland, as amended (“Real Property Article”); and (2) unreasonably assessed charges for damages that were pre-existing, not in excess of ordinary wear and tear, are not tenant responsibility or for which no actual cost was incurred, in violation of Section 8-203(f)(1) of the Real Property Article.

The Complainant was seeking an order from the Commission for the Respondents to refund her entire \$1,750.00 security deposit plus accrued interest and a penalty of up to threefold the amount of the security deposit that was unreasonably withheld.

After determining that Case No. 33940 was not susceptible to conciliation, the Department referred this matter to the Commission, and on January 7, 2014, the Commission voted to conduct a

public hearing on the matter. The public hearing in the matter of Case No. 33940, Tanya Twyman v Maya Nimo and Kwami Nimo, was held on March 18, 2014.

The record reflects that the Complainant and the Respondents were given proper notice of the hearing date and time. Present at the hearing and offering evidence were the Complainant, Tanya Twyman, and the Respondent Maya Nimo. Respondent Kwami Nimo was not in attendance.

The Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Commission entered into the record two (2) exhibits offered by the Complainant: (1) a March 23, 2012 Sear's Home Services receipt in the amount of \$220.26, identified as Complainant's Exhibit No. 1; and (2) an undated copy of a letter from Andrews & Lawrence Law Group, LLC Re: Past Due Homeowners Association Assessments through June 2013, identified as Complainant's Exhibit No. 2. The Commission also entered into the record three (3) exhibits offered by the Respondents: (1) an undated list of 2013 expenses, January 15, 2013 Ron the Plumber, Inc Job Work Order in the amount of \$233.00, a September 13, 2013 Four Seasons Lawn Care Invoice in the amount of \$50.00, a February 12, 2013 M R Electrician Invoice in the amount of \$160.00, and a January 14, 2013 M R Electrician Invoice in the amount of \$160.00, all identified as Respondents' Exhibit No. 1; (2) an undated handwritten three page list of repairs and notes from Respondent Maya Nimo, identified as Respondents' Exhibit No. 2; and (3) a December 29, 2010 Rent Receipt signed by Respondent Maya Nimo, identified as Respondents' Exhibit No. 3.

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 July 28, 2010, the Complainant, a participant in the Housing Opportunities Commission's (HOC) Housing Choice Voucher Program, and the Respondents executed a lease agreement ("Lease") for the rental of the Property, which commenced on July 28, 2010, and expired July 27, 2011.
2. Paragraph #10 of the Lease reflects that the Complainant paid a security deposit in the amount of \$1,750.00.
3. On July 28, 2010, the Complainant also signed a "Maryland Receipt of Security Deposit" reflecting payment of a security deposit in the amount of \$1,750.00.
4. The Commission finds that the Respondents were paid a security deposit in the amount of \$1,750.00.
5. After the expiration of the Lease, the Complainant remained in the Property as a month-to-month tenant.
6. On four occasions HOC sent the Complainant and Respondent Maya Nimo correspondence notifying them of Changes to Lease and Contract rental responsibility as follows:

Correspondence	Effective Date	HAP Payment	Tenant Payment	Total Rent
10/21/2011	Prior to 10/01/2011	\$1,394.00	\$347.00	\$1,741.00
10/21/2011	10/01/2011	\$1,424.00	\$317.00	\$1,741.00
06/12/2012	07/01/2012	\$1,389.00	\$352.00	\$1,741.00
01/31/2013	02/01/2013	\$1,401.00	\$340.00	\$1,741.00

7. On February 6, 2013, HOC sent the Respondents correspondence notifying them that: due to the Respondents' failure to meet Housing Quality Standards (HQS) for the Property, the Housing Assistance Payments (HAP) from HOC had been in abatement since January 5, 2013; the HAP contract was being terminated effective April 30, 2013; and "HOC has notified the client to move from this unit."

8. The Commission finds that the Respondents failed to provide a credible accounting of unpaid rent or late fees owed by the Complainant during her tenancy at the Property.

9. The Commission finds credible the Complainant's testimony that she vacated the Property owing rent only for her portion of April 2013 in the amount of \$340.00.

10. The Commission finds credible the Complainant's testimony that she fully vacated the Property effective April 30, 2013, and returned the keys to the Property to the Respondents through the mail.

11. The Commission finds that the Complainant is responsible for the payment of her portion of the April 2013 rent in the amount of \$340.00, and a late fee for April 2013 in the amount of \$17.00 (5% of \$340.00).

12. The Commission finds that the Complainant's tenancy terminated effective April 30, 2013.

13. The Commission finds that the Complainant accrued interest on her security deposit in the amount of \$131.25.

14. The Commission finds that the Respondents failed to establish that the Complainant damaged the Property in excess of ordinary wear and tear or substantiate any actual costs incurred for damages caused by the Complainant in excess of ordinary wear and tear.

15. The Commission finds credible the testimony of both the Complainant and the Respondent Maya Nimo, that after the Complainant's termination of tenancy, the Respondents did not send the Complainant a written list of damages together with a statement of costs actually incurred.

CONCLUSIONS OF LAW

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

1. The Respondents are justified in withholding from the security deposit plus accrued interest, the Complainant's unpaid April 2013 rent in the amount of \$340.00, and an April 2013 late fee in the amount of \$17.00, pursuant to Section 8-203(f)(1)(i) of the Real Property Article.
2. The Respondents failed to send the Complainant within 45 days (by June 14, 2013) after the termination of her tenancy, a written list of the damages claimed against the security deposit together with a statement of the cost actually incurred, pursuant to Section 8-203(g)(1) and (2) of the Real Property Article, and has created a defective tenancy. Therefore, pursuant to Section 8-203 (g) (2), the Respondents have forfeited their right to withhold any portion of the Complainant's security deposit for damages.
3. The Respondents' failure to return the Complainant interest in the amount of \$131.25 which had accrued on her security deposit constitutes a violation of Section 8-203(e)(1) of the Real Property Article, and has created a defective tenancy.
4. The Respondents' failure to return to the Complainant, the security deposit (\$1,750.00) plus accrued interest (\$131.25), less the Complainant's portion of April 2013 rent (\$340.00) and an April 2013 late fee (\$17.00) in the total amount of \$1,524.25, within 45 days after the end of tenancy, constitutes a violation of Section 8-203(e)(1) of the Real Property Article, and has created a defective tenancy.
5. The Respondents' failure to handle and dispose of the Complainant's security deposit plus accrued interest 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. Although the Commission finds violations of Section 8-203 of the Real Property Article, to award a penalty as requested by the Complainant, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Respondents' conduct in wrongfully withholding part of the Complainant's security deposit and whether or not the Respondents acted in bad faith or have a prior history of wrongful withholding of a security deposit. Based on the evidence, the Commission concludes that the Respondents' 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 Respondents must pay the Complainant **\$1,524.25**, which sum represents the Complainant's security deposit (\$1,750.00) plus accrued interest (\$131.25), less \$340.00 for April 2013 rent and \$17.00 April 2013 late fee.

Commissioner Mora Rogers, Commissioner Charles Marschke, and Commissioner Jeffrey Slavin, Panel Chairperson, unanimously concurred in the foregoing decision.

To comply with this Order, Respondents Maya Nimo and Kwami Nimo must forward to the Office of Landlord-Tenant Affairs, Attention: Rosie McCray-Moody, Administrator, 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 Tanya Twyman, in the full amount of \$1,524.25.

The Respondents, Maya Nimo and Kwami Nimo, 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 as a Class A violation under the County Code 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, should the Commission determine that the Respondents have 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 under the Maryland Rules governing administrative appeals. In accordance with Section 29-49 of the County Code, should the Respondents choose to appeal the Commission's Order, he must post a bond with the Circuit Court in the amount of the award (\$1,524.25) if they seek a stay of enforcement of this Order.

Jeffrey Slavin, Panel Chair
Commission on Landlord-Tenant Affairs