

34837, the Tenant vacated the Property, and on January 22, 2015, the Tenant amended his complaint, alleging that the Landlord also failed to return his full security deposit plus accrued interest within forty-five days after his termination of tenancy in violation of Section 8-203(e)(1) of the Real Property Article, Annotated Code of Maryland, as Amended ("Real Property Article").

In the complaint, identified as Case No. 34837, the Tenant was seeking an order from the Commission for the Landlord to: (1) remove overcharges for water use and late fees; (2) acknowledge timely payment of rent; and (3) refund his entire \$1,300.00 security deposit plus accrued interest. The Tenant also requested imposition of a penalty of up to threefold the amount of the security deposit that was unreasonably withheld, plus attorney's fees.

On December 17, 2014, the Landlord filed a cross-complaint with the Department, identified as Case No. 34932, in which he alleged that the Tenant: (1) owed unpaid rent and fees in violation of the lease agreement; (2) misused/excessively used personal utilities causing an excessively high water utility bill for which he was responsible; and (3) caused physical damages to the Property in excess of ordinary wear and tear for which he was responsible.

In the complaint, identified as Case No. 34932, Landlord was seeking: (1) reimbursement from the Tenant for unpaid rent and damages; and (2) resolution of the security deposit distribution.

After determining that Cases No. 34837 and 34932 were not susceptible to conciliation, the Department referred this matter to the Commission, and on April 3, 2015, the Commission voted to conduct a public hearing on the matter. The public hearing in the matter of Case No. 34837 *Nick Anthony Sampson v Mithun Banerjee*, and Case No. 34932 *Mithun Banerjee v Nick Anthony Sampson* was held on December 15, 2015.

The record reflects that the Tenant and the Landlord were given proper notice of the hearing date and time. Present at the hearing and offering evidence were the Tenant, Nick Anthony Sampson, the Tenant's attorney Michael Krotman, the Tenant's witnesses Dawn Steis, Representative Payee Agent, and Madeline Scott, direct support professional, the Landlord, Mithun Banerjee, and the Landlord's witnesses Jason Wilcox, tenant at the Property, and Sandra Reading, tenant at the Property. Also present were Jane Blackwell, Investigator, Office of Landlord-Tenant Affairs, Rosie-McCray-Moody, Administrator, Office of Landlord-Tenant Affairs, and Walter Wilson, Office of the County Attorney.

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 Tenant: (1) two pages of text messages between the Landlord and the Tenant, with dates ranging from July 25, 2014 through November 4, 2014, identified as Tenant's Exhibit No. 1; and (2) four pages of photographs, identified as Tenant's Exhibit No. 2. The Commission also entered into the record five (5) exhibits offered by the Landlord: (1) a five page statement from the Landlord, dated December 15, 2015, identified as Landlord's Exhibit No. 1; (2) six pages of text messages between the Tenant and the Landlord, with dates ranging from September 1, 2014 through November 12, 2014, identified as Landlord's Exhibit No. 2; (3) a "DHR Verification of Rent and Living Arrangements" form signed by the Landlord, dated March 16, 2014, identified as Landlord's Exhibit No. 3; (4) a December 18, 2014 invoice #00000104 from Franklin Rodriguez Ordonez in the amount of \$180.00, a December 18, 2014 invoice #00000105 from Franklin Rodriguez Ordonez in the amount of \$120.00, a December 19, 2014 invoice #00000106 from Franklin Rodriguez Ordonez in the amount of \$399.00, the front of check #3313 signed by the Landlord dated December 18, 2014 and made payable to Franklin Rodriguez Ordonez in the amount of \$120.00, the front of check #3312 signed by the Landlord dated December 18, 2014 and made payable to Franklin Rodriguez Ordonez in the amount of \$180.00, and eight

photographs, all identified as Landlord's Exhibit No. 4; and (5) a December 15, 2014 receipt from Home Depot in the amount of \$64.02, and a December 16, 2014 receipt from Home Depot in the amount of \$22.65, both identified as Landlord's Exhibit No. 5.

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 May 10, 2013, the Tenant and the Landlord executed a lease agreement ("Lease") for the rental of the Property, at a weekly rental rate of \$150.00, which commenced on May 10, 2013, and expired November 9, 2013.
2. The Commission finds credible the testimony of the Tenant and the Landlord that during the Tenant's tenancy, there were several tenant-occupants of the Property under individual leases who shared the home, each with access to individual bedrooms and to all common areas of the Property.
3. The Commission finds that the Property is licensed as a Single Family Rental Facility in Montgomery County and is subject to the provisions of Chapter 29 of the Montgomery County Code.
4. Paragraph #3 of the Lease reflects that the Tenant paid a security deposit in the amount of \$1,300.00; and Paragraph #7 of the Lease states that "Tenant must pay 1/4, 1/2, ____ (other) of utility charges as marked: (check all that apply) Gas Electric water and sewer telephone cable Other \$75/month overages These payments will be made when the Landlord presents a bill to the Tenant."
5. The Commission finds credible testimony that the Tenant has special needs, and has individuals who assist him with his living arrangements and finances; that Alicia Tomlin served as the Tenant's representative-payee at the beginning of the Tenant's tenancy until May or June of 2013; that Madeline Scott has served as the Tenant's support specialist since February 2014; and that beginning in September 2014 Dawn Steis began as the Tenant's representative-payee.
6. The Commission finds credible the testimony of the Tenant that although he reviewed the Lease with the Landlord and Alicia Tomlin, his prior representative-payee, he did not fully understand the intended provisions of Paragraph #7 of the Lease regarding utilities.
7. On November 10, 2013, the Landlord and the Tenant signed an "Extension of the Rental Leasing Contract" extending the tenancy for 6 months, stating "New Rent: \$150.00/week (\$650/month + \$5/month for cable).
8. On May 10, 2014, the Landlord and the Tenant signed an "Extension of the Rental Leasing Contract" extending the tenancy for 6 months, stating "New Rent: \$150.00/week (\$650/month + \$6/month for cable).
9. On October 22, 2014, the Landlord issued the Tenant a notice to vacate the Property effective 10/28/2014.

10. The Commission finds credible the testimony of the Tenant, Dawn Steis and Madeline Scott, that the Tenant fully vacated the Property effective October 31, 2014, paying rent through that date, and removing all personal items from the Property except for a cable box left for the Landlord, and a few items of furniture requested to be left at the Property by house-mate Sandra Reading for use by her or other occupants at the Property. There were additional items of the Tenant's personal property left at the curb for bulk trash pickup.

11. The Commission finds credible the testimony of the Tenant, Dawn Steis and Madeline Scott, that on October 31, 2014, and between October 31 and November 7, 2014, numerous notifications were left by them for the Landlord by voicemail and text message advising that the Tenant had vacated the Property, and inquiring as to how to return the keys; and the testimony of Dawn Steis and Madeline Scott that on November 7, 2014, they removed the remaining few items of furniture (previously requested to be left at the Property by house-mate Sandra Reading for use by her or other occupants) from the Property to the curb for bulk trash pickup, and delivered the keys to the Landlord's mailbox.

12. The Commission finds that on October 31, 2014, the Landlord was notified that the Tenant vacated the Property, the Landlord had access to and possession of the Property effective October 31, 2014, and that the Tenant's tenancy terminated effective October 31, 2014.

13. On December 17, 2014, the Landlord hand delivered to the Tenant and Dawn Steis a "Refund of Security Deposit & Itemized Deductions," dated December 17, 2014, reflecting amounts deducted from the security deposit, and reflecting a remaining balance owed from the Tenant in the amount of \$52.96 as follows:

$$\begin{aligned}
 \text{Utility overages} &= (\text{from } 5/10/13) \text{ May } 2013 + \text{July } 2013 + \text{Aug } 2013 + \text{Sept } 2013 \\
 &\quad + \text{Oct } 2013 + \text{Nov } 2013 + \text{Dec } 2013 + \text{Jan } 2014 + \text{Feb } 2014 \\
 &\quad + \text{March } 2014 + \text{April } 2014 + \text{June } 2014 + \text{July } 2014 + \text{Aug } 2014 \\
 &\quad + \text{Sept } 2014 + \text{Oct } 2014 + \text{Nov } 2014 (\text{until } 11/12/14) \\
 &= \$3.87 + 29.21 + 30 + 64.27 + 72.97 + 32.83 + 49.2 + 37.74 \\
 &\quad 39.52 + 35.05 + 130.22 + 22.26 + 23.76 + 48.56 + 50.4 \\
 &\quad 28.75 + 6.58 + \\
 &= 705.29 \\
 \text{Interest on Security Deposit} &= 1300 \times 3\% = \$39 \\
 \text{Security Deposit} &= \$1300 \\
 \text{Unpaid Rent until Nov } 12^{\text{th}}, 2014 &= \$257.14 \\
 \text{Late Fees} &= 7.5 + 5.36 = \$12.86 \\
 \text{Expenses} &= \text{Receipt 1} + \text{Receipt 2} + \text{Home Depot Labor Charge} + \text{Handyman} \\
 &= \$64.02 + 22.65 + 300 + 180 \\
 &= \$566.67 \\
 \text{Cable on Deposit} &= \$50 \\
 \text{Total Refund} &= 1300 + 39 - 257.14 - 705.29 - 566.67 + 50 \\
 &= (-140.10) \\
 \text{Extra Utility Money Received} &= \$100 \qquad \text{Total Due} = 140.10 - 100 = 40.10 \\
 &\qquad \qquad \qquad \text{Late Fees} = 12.86 \qquad \qquad \qquad = \$52.96
 \end{aligned}$$

14. On January 2, 2015, the Landlord, through his attorney, sent the Tenant correspondence requesting payment from the Tenant in the amount of \$252.46, with a revised itemization dated December 19, 2014, which states:

$$\text{Utility overages} = (\text{from } 5/10/13) \text{ May } 2013 + \text{July } 2013 + \text{Aug } 2013 + \text{Sept } 2013$$

$$\begin{aligned}
& + \text{Oct 2013} + \text{Nov 2013} + \text{Dec 2013} + \text{Jan 2014} + \text{Feb 2014} \\
& + \text{March 2014} + \text{April 2014} + \text{June 2014} + \text{July 2014} + \text{Aug 2014} \\
& + \text{Sept 2014} + \text{Oct 2014} + \text{Nov 2014 (until 11/12/14)} \\
= & \$3.87 + 29.21 + 30 + 64.27 + 72.97 + 32.83 + 49.2 + 37.74 \\
& 39.52 + 35.05 + 130.22 + 22.26 + 23.76 + 48.56 + 50.4 \\
& 28.75 + 6.58 + \\
= & 705.29
\end{aligned}$$

Interest on Security Deposit = $1300 \times 4.5\% = \$58.50$

Security Deposit = \$1300

Unpaid Rent until Nov 12th, 2014 = \$257.14

Late Fees = $7.5 + 5.36 = \$12.86$

Expenses for damages made by Tenant = $\$64.02 + \$22.65 + \$300 + \$180 + \$99 = \665.67

Cable Box Deposit = \$50

Overage Utility Payment Received = \$100

Carpet cleaning to remove urine smell = \$120.00

Total Refund = $1300 + 58.50 + 50 + 100 - 257.14 - 12.86 - 665.67 - 120 - 705.29$

= $1508.50 - 1760.96$

= (-252.46)

15. The Commission finds that the Landlord was paid a security deposit in the amount of \$1,300.00.

16. The Commission finds that the Tenant's tenancy terminated effective October 31, 2014.

17. The Commission finds that the security deposit accounting(s) dated December 17, 2014, December 19, 2014, and January 3, 2015, were not sent to the Complainant by regular mail to his last known address within forty-five days (December 15, 2014) after the Tenant's October 31, 2014 termination of tenancy.

18. The Commission finds that interest accrued on the Tenant's security deposit in the amount of \$39.00

19. The Commission finds no evidence that the Tenant mis-used/excessively used personal utilities causing an excessively high water utility bill for which he was responsible

20. The Commission finds the provisions of the Lease regarding Tenant responsibility for utilities to be both vague and unclear, and that the unclear provisions of the Lease are construed against the Landlord.

21. The Commission finds that the Landlord failed to provide a credible accounting of unpaid utilities, rent or late fees owed by the Tenant during his tenancy at the Property.

22. Based upon the testimony presented at the hearing, the Commission finds that the Complainant did not owe past due rent and late fees after the termination of his tenancy.

23. The Commission finds that the testimonies of the Respondent's witnesses, Jason Wilcox and Sandra Reading, tenants at the Property, were unclear and not germane regarding the Tenant's Lease and the cause of any damages at the Property.

24. The Commission finds that the Landlord failed to establish that the Tenant caused physical damage to the Property in excess of ordinary wear and tear during his tenancy. Therefore, the charges assessed for damages in the amount of \$665.67 and carpet cleaning in the amount of \$120.00 are disallowed.

25. Based on accountings provided by the Landlord, the Tenant is owed a credit of \$100.00 for overage utility payment received, and a credit of \$50.00 for a cable box deposit.

26. Based on representation at the hearing by the Tenant's attorney Michael Krotman, the Tenant has incurred attorney's fees in the amount of \$2,750.

CONCLUSIONS OF LAW

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

1. Based on the Commission's finding that the Tenant's tenancy ended October 31, 2014, the Tenant does not owe the Landlord November 2015 rent in the amount of \$257.14 or late fees in the amount of \$12.86. Pursuant to Section 8-203(f)(1)(i) of the Real Property Article, the deduction from the Tenant's security deposit for these costs represents a violation of Section 8-203(g)(1) of the Real Property Article and has created a defective tenancy.

2. Any ambiguity in a contract is construed against the author of the contract. Paragraph # 7 of the Lease is both vague and unclear, and, therefore the Tenant is not responsible for utility costs for the Property, in the amount of \$705.29. Pursuant to Section 8-203(f)(1)(i) of the Real Property Article, the deduction from the Tenant's security deposit for these costs is disallowed, represents a violation of Section 8-203(g)(1) of the Real Property Article, and has created a defective tenancy.

3. The Landlord failed to provide probative evidence to establish that the Tenant caused physical damages to the Property in excess of ordinary wear and tear as required by Section 8-203(f)(1)(i) of the Real Property Article, therefore the deductions from the security deposit for costs in the amount of \$667.57 for damages and \$120.00 for carpet cleaning are disallowed, and represent a violation of Section 8-203(g)(1) of the Real Property Article and have created a defective tenancy.

4. The Landlord failed to send the Tenant by regular mail to his last known address within 45 days (by December 15, 2014) after the termination of his 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 Landlord has forfeited his right to withhold any portion of the Tenant's security deposit for damages.

5. The Landlord's failure to return to the Tenant the security deposit (\$1,300.00) plus accrued interest (\$39.00) in the total amount of \$1,339.00 by regular mail to the Tenant's last known address 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.

6. The Landlord's failure to handle and dispose of the Tenant'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.

7. The failure by the Landlord to refund \$1,339.00 of the Tenant's security deposit plus accrued interest was unreasonable and constituted a violation of Section 8-203(e)(4) of the Real Property Article. To award a penalty, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Respondent's conduct in wrongfully withholding 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, and testimony of the Respondent, the Commission concludes that the Respondent's conduct does rise to the level of bad faith and egregiousness necessary to award a penalty. Therefore, an additional award of \$1,339.00 as a penalty is granted. No moneys are being awarded for attorney fees.

8. The Landlord owes the Tenant a credit of \$100.00 for overage utility payment received, and a credit of \$50.00 for a cable box deposit.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that in reference to Case No. 34837, the Landlord must pay the Tenant **\$2,828.00**, which sum represents the Tenant's security deposit (\$1,300.00) plus accrued interest (\$39.00), plus penalty (\$1,339.00), plus credit for overage utility payment received (100.00) and cable box deposit (50.00). Case No. 34932 is dismissed.

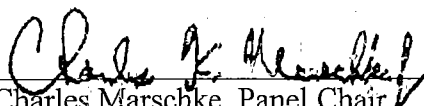
Commissioner Laura Murray, Commissioner Kenneth Lemberg, and Commissioner Charles Marschke, Panel Chairperson, unanimously concurred in the foregoing decision.

To comply with this Order, Landlord Mithun Banerjee 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 Nick Anthony Sampson, in the full amount of \$2,828.00.

The Landlord, Mithun Banerjee, 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 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 Landlords 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 Landlord choose to appeal the Commission's Order, he must post a bond with the Circuit Court in the amount of the award (\$2,828.00) if he seeks a stay of enforcement of this Order.



Charles Marschke, Panel Chair
Commission on Landlord-Tenant Affairs