

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

In the matter of:

Janet Yu, Alan Yu,
Jeffrey Yu and Corey Yu

Complainants

V.

Marcos Guzman

Respondent

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Case No. 35310

Single Family: 312 Stonington Road, Silver Spring, Maryland (Rental Facility License No. 31769)

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 10th day of March, 2016, found, determined, and ordered as follows:

BACKGROUND

On July 27, 2015, Janet Yu, Alan Yu, Jeffrey Yu and Corey Yu ("Complainants"), former tenants at 312 Stonington Road, Silver Spring, 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 they allege that Marcos Guzman, owner of the Property ("Respondent"): (1) failed to send by first-class mail, directed to their last known address, an itemized list of damages together with a statement of costs actually incurred to repair those damages, within 45 days after the termination of their tenancy, in violation of § 8-203(g)(1) of Real Property Article, Annotated Code of Maryland, 1999, as amended ("Real Property Article"); (2) failed to pay interest on the security deposit in violation of § 8-203(e) of the Real Property Article; (3) failed to refund their full \$8,400.00 security deposit plus accrued interest within the 45 days after the termination of their tenancy, in violation of § 8-203(e)(1) of the Real Property Article; and (4) unreasonably assessed charges for damages that are not in excess of ordinary wear and tear, that are not tenant responsibility, or for which no actual cost was incurred in violation of § 8-203 (f) (1) of the Real Property Article.

The Complainants were seeking an order from the Commission for the Respondent to refund the withheld amount (of their 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. 35310 was not susceptible to conciliation, the Department referred this matter to the Commission, and on November 3, 2016, the Commission voted to conduct a public hearing on the matter. The public hearing in the matter of Case No. 35310, Janet Yu, Alan Yu, Jeffrey Yu and Corey Yu v Marcos Guzman, was held on January 12, 2016.

The record reflects that the Complainants and the Respondent were given proper notice of the hearing date and time. Present at the hearing and offering evidence were the Complainant Janet Yu, the Complainant Corey Yu, the Respondent Marcos Guzman, the Respondent's attorney Monroe Mizel, and the Respondent's witness Esteban Juarez. Also present was Jane Blackwell, Investigator, Office of Landlord-Tenant Affairs. Complainant Alan Yu and Complainant Jeffrey Yu were not in attendance.

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 the record the following exhibit offered by the Respondent: a revised list of expenses, identified as Respondent's Exhibit No. 1.

The Commission decided to keep the record open to allow the Complainants and Respondent to provide additional information for the record, with all information to be mailed within seven calendar days, by January 19, 2016, for the Respondent to submit specific and explicit documentation of expenses; and for the Complainant to submit the following evidence: (1) the list of damages allegedly submitted at the beginning of tenancy; (2) the list of damages allegedly submitted to the Respondent in 2013; and (3) any other hard copy documentation that is valid and time stamped. On January 20, 2016, the Department received, documentation from the Complainants via U.S. Postal Service post-marked January 19, 2016, which was marked as Complainants' Exhibit #1. On January 27, 2016, the Department received, documentation from the Respondent's attorney via U.S. Postal Service post-marked January 20, 2016, which was marked as Respondent's Exhibit #2. These exhibits were forwarded to the parties. The record was closed on January 27, 2016.

FINDINGS OF FACT

Based on the evidence of record, the Commission makes the following findings of fact:

1. On January 11, 2011, the Complainants and the Respondent executed a one-year lease agreement ("Lease") for the rental of the Property which commenced on January 12, 2011, and reflects the payment of a security deposit in the amount of \$8,400.00.
2. The Commission finds that the Complainants paid the Respondent a security deposit in the amount of \$8,400.00.
3. The Commission finds credible the Complainants' testimony that they vacated the Property effective May 8, 2015, paying rent through April 30, 2015.
4. The Commission finds credible the testimony of both the Complainants and the Respondent, that they did a final walk-thru inspection of the Property on May 8, 2015 and that the Complainants returned one key to the Respondent.
5. The Commission finds that the Complainants' tenancy terminated on May 8, 2015.

6. The Commission finds that on June 23, 2015 (46 days after the termination of tenancy), the Respondent mailed a partial return of the security deposit to the Complainants in the amount of \$3,397.85.

7. The Commission finds that on June 23, 2015 (46 days after the termination of tenancy), the Respondent mailed correspondence to the Complainants advising that deductions were being made from the security deposit as follows:

1) Repair and paint damaged walls throughout home (including 1 bedroom where tenant changed the color)	\$940.00
2) Repair damaged hardwood floor in Kitchen and Family Room	\$710.00
3) Lawn mowing	\$35.00
4) Installation of new locksets due to non-returned keys	\$255.00
5) Unpaid water bill	\$124.67
6) Rent from May 1 to May 8, 2015 (1 key returned & walkthrough on 5/8/15)	\$1,135.48
7) Required cleaning of entire home (including garage and attic) after Tenant's departure	\$360.00
8) Repair and replace damaged door and wood trim (due to disallowed dogs living in home)	\$345.00
9) Repair kitchen base cabinets damaged by dogs	\$150.00
10) Removal of accordion door installed by tenant and installation of prior door in bedroom	\$162.00
11) Installation of sliding closet door removed by tenants in Basement	\$115.00
12) Replace carpets damaged by dogs in Basement	\$130.00
13) Replace of laundry washing machine (taken by tenants)	\$460.00
14) Removal and disposal of tenant's remaining debris	\$80.00
Total costs	\$5,002.15
Security Deposit	\$8,400.00
Total Due Tenant	\$3,397.85

8. The Commission finds that the Respondent's correspondence noted in Paragraph No. 7 above, reflects the Respondent's assessment of rental responsibility through May 8, 2015.

9. The Commission finds that the Complainants' monthly rent at the termination of their tenancy was \$4,400.00.

10. At the hearing, the Complainants acknowledged responsibility for May 2015 rent through the termination of their tenancy, and agreed to accept the deduction from the security deposit for the May 2015 rent through the termination of their tenancy.

11. The Commission finds that the Complainant is responsible for the payment of May 2015 rent through May 8, 2015, in the amount of \$1,135.48 ($\$4,400.00 / 31 \times 8$).

12. The Commission finds that the Respondent incurred costs in the amount of \$124.67 for the WSSC bill for services in April and May 2015.

13. At the hearing, the Complainants acknowledged that they did not make payment of the final Washington Suburban Sanitary Commission ("WSSC") bill for the Property, and agreed to accept the deduction from the security deposit for the WSSC bill.

14. The Commission finds that interest accrued on the Complainants' security deposit in the amount of \$1,048.39.

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 Complainants' tenancy ended May 8, 2015, the Respondent failed to send the Complainants a written list of the damages claimed against the security deposit together with a statement of the cost actually incurred, within 45 days (by June 22, 2015) after the termination of their tenancy, as required under 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) of the Real Property Article, the Respondent has forfeited his right to withhold any portion of the Complainants' security deposit for damages.
2. The Respondent's failure to return the Complainants interest in the amount of \$1,048.39 which had accrued on their security deposit constitutes a violation of Section 8-203(e)(1) of the Real Property Article, and has created a defective tenancy.
3. The Respondent's failure to return to the Complainants any balance of the security deposit plus accrued, within 45 days (by June 22, 2015) after the termination of their of tenancy, 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 handle and dispose of the Complainants' 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.
5. Pursuant to the Complainants' agreement at the hearing to accept responsibility for the final WSSC bill, the withholding of \$124.67 for the WSSC bill by the Respondent is allowed.
6. Pursuant to the Complainants' agreement at the hearing to accept responsibility for May 2015 rent through the termination of their tenancy, and the Commissions' finding that the Complainants' tenancy ended May 8, 2015, the withholding of \$1,135.48 (\$4,400.00 / 31 x 8) for May rent by the Respondent is allowed.
7. Although the Commission finds violations of Section 8-203 of the Real Property Article, to award a penalty as requested by the Complainants, 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 part of the Complainants' 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 does not rise to the level of bad faith or egregiousness necessary to award a penalty, and therefore, Complainants' 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 Complainants **\$4,790.39**, which sum represents the Complainants' security deposit (\$8,400.00) plus accrued interest (\$1,048.39), less the amount already returned (\$3,397.85), eight days of May 2016 rent (\$1,135.48) and the final WSSC utility bill (\$124.67).

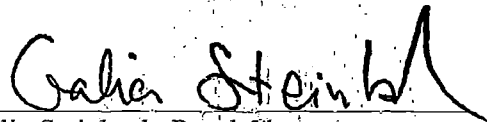
Commissioner Aluandra Drain and Commissioner Terri Torain concurred in the foregoing decision. Panel Chairperson Commissioner Galia Steinbach dissented.

To comply with this Order, Respondent Marcos Guzman 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 Janet Yu, Alan Yu, Jeffrey Yu and Corey Yu, in the full amount of \$4,790.39.

The Respondent, Marcos Guzman, 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 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 under the Maryland Rules governing administrative appeals. In accordance with 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 (\$4,790.39) if he seeks a stay of enforcement of this Order.



Galia Steinbach, Panel Chair
Commission on Landlord-Tenant Affairs