

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

In the matter of:

Mo Salehy and Aryan Salehy

Complainants

V.

Judith Koenick

Respondent

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Case No. 35319

Rental Facility: 8211 Meadowbrook Lane, Chevy Chase, Maryland (License # 48562)

**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, and the Commission having considered the testimony and evidence of record, it is therefore, this 11<sup>th</sup> day of March, 2016, found, determined, and ordered, as follows:

**BACKGROUND**

On July 27, 2015, Mo Salehy and Aryan Salehy ("Complainants"), former tenants at 8211 Meadowbrook Lane, Chevy Chase, Maryland ("Property"), a licensed rental property in Montgomery County, Maryland, filed a complaint with the Office of Landlord-Tenant Affairs ("Office") within the Department of Housing and Community Affairs, ("Department") in which they alleged that their former landlord, Judith Koenick, owner of the Property ("Respondent"): (1) failed to refund their full \$3,000.00 security deposit plus accrued interest within 45 days after the termination of their tenancy, in violation of Section 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 not in excess of ordinary wear and tear or are not the Complainants' responsibility and/or for which no actual costs were incurred, in violation of Section 8-203(f)(1) of the Real Property Article. Additionally, the Complainants claim that, in accordance with Section 8-203(e)(4) of the Real Property Article, the Respondent's unreasonable withholding of their security deposit plus accrued interest makes the Respondent subject to a penalty of up to three times the unreasonably withheld amount.

The Complainants assert that the Respondent: (1) failed to return their entire \$3,000.00 security deposit plus accrued interest within forty-five days after their termination of tenancy;

and (2) charged them for damages that were not listed on the walk-through inspection at the termination of tenancy, were not in excess of ordinary wear and tear, were not their responsibility, and for which no repair services were provided and/or for which no actual costs were incurred.

The Complainants are seeking an order from the Commission requiring the Respondent to refund the withheld portion of their \$3,000.00 security deposit plus interest, and imposing a penalty of up to three times any amount unreasonably withheld from their security deposit plus interest.

After determining that the complaint was not susceptible to conciliation, the Department duly referred this case to the Commission for its review, and on November 3, 2015, the Commission voted to hold a public hearing on January 19, 2016. The public hearing in this matter was held on January 19, 2016.

The record reflects that the Complainants and the Respondent were given proper notice of the hearing date and time. On January 7, 2016, Complainant Mo Salehy requested special consideration to attend the public hearing via Skype, due to his being out of state on the scheduled date of the hearing. The Respondent made no opposition to the request. The Commission granted participation of Complainant Mo Salehy, via Skype. On the night of the hearing there were technical difficulties. So the hearing panel allowed Complainant Mo Salehy to provide testimony by telephone. Present and sworn at the hearing and presenting evidence were the Complainant, Aryan Salehy, Complainant Mo Salehy (via telephone), and the Complainants' witness Paradise Salehy. Also present were Jane Blackwell, Investigator, Office of Landlord-Tenant Affairs, and Walter Wilson, Associate County Attorney, Office of the County Attorney. The Respondent, Judith Koenick, failed to appear at the hearing.

The Commission notes that the Department sent notice of the January 19, 2016, hearing to the Respondent on December 14, 2015, by both regular and certified mail, return receipt requested (Pages 83-85 -Commission's Exhibit 1). The Respondent was notified on the Summons, Statement of Charges and Notice of Hearing that she may request a continuance of the hearing by written request not less than 5 days prior to the date of the hearing. The Commission further finds that neither the "Summons and Statement of Charges" sent by first class mail nor the one sent by certified mail were returned to the Department by the U.S. Postal Service. The Commission also notes that the Respondent was personally served with the "Summons and Statement of Charges" on December 17, 2015. No written request for continuance was made. The Commission finds, that all parties received proper notice of the hearing date and time.

Without objection, the Commission entered into the record the case file compiled by the Department identified as Commission's Exhibit No. 1. There were no exhibits offered by the Complainants or Respondent.

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

1. On or about July 26, 2013, the Respondent and the Complainants signed a one year lease agreement ("Lease") for the rental of the Property, which commenced on July 31, 2013, and expired on July 31, 2014.
2. On July 31, 2013, the Complainants paid the Respondent a security deposit, in the amount of \$3,000.00, which amount is received in the Lease.
3. The Commission finds that the Complainants vacated the Property on April 30, 2015, paying rent in full through that date.
4. The Commission finds that the Complainants' tenancy terminated April 30, 2015.
5. The Commission finds credible the evidence in the record and the testimony of the Complainants, and the Complainants' witness Paradise Salehy, that the Property was in clean condition at the termination of the Complainants' tenancy, with no damages in excess of ordinary wear and tear caused by them.
6. The Commission finds that the Respondent sent the Complainants an undated itemized list of damages, and a partial return of the security deposit plus accrued interest in the amount of \$1,787.00. The list of damages states:

Item	Cost
Carpet replacement Pro-Rated	\$ 600.00
Window & Bathroom Cleaning	263.00
Landscaping	250.00
Lightbulbs	50.00
Flagstone & tire damage	50.00
Gutter Cleaning	25.00
Weed control yard	<u>100.00</u>
Total	\$1,348.00
Security Deposit	\$3,000.00
Interest	<u>135.00</u>
	\$3,135.00
	<u>1,348.00</u>
Refund	\$1,787.00

7. The Commission finds that the Respondent credited the Complainants' security deposit with the correct amount of simple interest.
8. The Commission finds that on August 20, 2015, and September 9, 2015, the Office sent correspondence to the Respondent requesting documentation related to her failure to return the security deposit plus accrued interest.

9. The Commission finds that the Respondent failed to provide the Office with information and documentation requested in the Office's August 20, 2015, and September 9, 2015 letters to the Respondent. The Commission also finds that the Respondent failed to attend the September 9, 2015 conciliation conference.

10. The Commission finds that there is no probative evidence to indicate the Property was damaged in excess of ordinary wear and tear as a result of the Complainants' tenancy.

11. The Commission finds that there is no probative evidence to indicate Respondent incurred any actual costs to repair any damages as a result of the Complainants' tenancy.

12. The Commission finds that there is no probative evidence to indicate the itemized list of damages was sent to the Complainants within forty-five (45) days after their termination of tenancy (by June 14, 2015).

### 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 Respondent failed to send the Complainants within 45 days after the termination of their tenancy, a written list of the damages together with a statement of the cost actually incurred, as required by Section 8-203(g)(1) and (2) of the Real Property Article. Therefore, pursuant to Section 8-203 (g) (2), the Respondent has forfeited her right to withhold any portion of the Complainants' security deposit for damages.

2. The Respondent withheld the amount of \$1,348.00 from the Complainants' security deposit plus accrued interest for damages that were not in excess of ordinary wear and tear or are not the Complainants' responsibility, and for which no actual costs were incurred, in violation of Section 8-203(f)(1) of the Real Property Article: thereby causing a defective tenancy;

3. The Respondents' failure to return to the Complainants, the full balance of the security deposit (\$3,000.00) plus accrued interest (\$135.00), 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.

4. 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.

5. 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 Respondent's conduct in wrongfully withholding 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 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 \$1,348.00, which sum represents the Complainants' security deposit (\$3,000.00), plus accrued interest (\$135.00), less the refund already received by the Complainants (\$1,787.00).

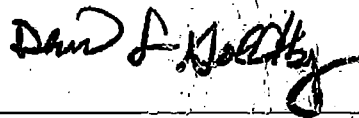
Commissioner Lawrence Cullen, Commissioner Mora Rogers, and Commissioner David Goldberg, Panel Chairperson, unanimously concurred in the foregoing decision.

To comply with this Order, Respondent, Judith Koenick, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4<sup>th</sup> Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order, a check, made payable to Mo Salehy and Aryan Salehy, in the amount of \$1,348.00.

The Respondent, Judith Koenick, 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 a Class A civil citation and \$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 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. Pursuant to Section 29-49 of the County Code, should the Respondent choose to appeal the Commission's Order, she must post a bond with the Circuit Court in the amount of the award (\$1,348.00) if a stay of enforcement of this Decision and Order is sought.



David Goldberg, Panel Chairperson  
Commission on Landlord-Tenant Affairs