

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

In the matter of:

Fatih Oke

And

Asuman Oke

Complainants

V.

Tamineh Farhadyeh

Respondent

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Case No. 35363

Investigator: Jane Blackwell

Single Family: 6508 Wilmet Road, Bethesda, Maryland (Rental Facility License No. 79111)

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 8th day of September, 2016, found, determined, and ordered as follows:

BACKGROUND

On August 17, 2015, Fatih Oke and Asuman Oke ("Complainants"), former tenants at 6508 Wilmet Road, Bethesda, 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 Tamineh Farhadyeh ("Respondent"), owner of the Property, through his agent, Dan Oxenburg, Property Manager, Mount High Realty ("Agent"): (1) failed to refund their full \$3,050.00 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, Annotated Code of Maryland, as amended ("Real Property Article"); and (2) unreasonably assessed charges against the security deposit for damages that were either 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 Complainants were seeking an order from the Commission for the Respondents to refund any portion of the security deposit plus accrued interest that was unreasonably withheld.

After determining that Case No. 35363 was not susceptible to conciliation, the Department referred this case to the Commission, and on March 1, 2016, the Commission voted to conduct a public hearing on April 19, 2016. Due to a scheduling conflict, Respondent Tamineh Farhadyeh, requested a continuance of the public hearing, which was granted by the Commission. The public hearing in the matter of Fatih Oke and Asuman Oke v Tamineh Farhadyeh, relative to Case No. 35363 was held on April 26, 2016.

The record reflects that the Complainants and the Respondent were given proper notice of the hearing date and time. On April 11, 2016, the Respondent requested special consideration to attend the public hearing via Skype, due to her ill-health and place of residence (New Jersey); and requested the presence of a Persian interpreter for herself, and a Spanish interpreter for one of her witnesses. The Commission granted participation of Respondent Tamineh Farhadyeh, via Skype. Present and sworn at the hearing and presenting evidence were the Complainant Fatih Oke, the Complainants' attorney, Kavita Puri, the Complainants' witness Sennur Fahrli, the Respondent Tamineh Farhadyeh (via Skype), the Respondent's witnesses agent Daniel Oxenburg and contractor Minor Cruz, and Investigator Jane Blackwell. Also present and sworn at the hearing were Farsi Interpreter Elias Samghani, and Spanish Interpreter Cesar Eloisa. Complainant Asuman Oke 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 Respondent: (1) a Rental Walk Through list, dated 9/30/2014, identified as Respondent's Exhibit No. 1; and (2) four cancelled checks: Check #3290 in the amount of \$555.00, payable to Luis Rivera, dated 7/7/2015; Check #3304 in the amount of \$280.00, payable to Ines Lopez, dated 7/13/2015; Check #3311 in the amount of \$72.34, payable to WSSC, dated 7/28/2015; and Check #3120 in the amount of \$100.00, payable to Minor Cruz, dated 12/4/2014, all identified as Respondent's Exhibit No. 2.

The Commission kept the record open for ten calendar days, until May 6, 2016, so the Complainants could provide video submission(s) reflecting the condition of the Property at the termination of their tenancy. On April 26, 2016, the Department received an email from the Complainant with a video attachment time-stamped 7/1/2015, which was marked as Complainants' Exhibit #1 and forwarded to all the parties. The record was closed on May 6, 2016.

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 September 11, 2014, the Respondent and the Complainants signed a lease agreement ("Lease") for the rental of the Property, which commenced on October 1, 2014, and was scheduled to expire on September 30, 2019.
2. Paragraph #4 of the Lease reflects the payment of a security deposit in the amount of \$3,050.00. Paragraph #11 of the Lease reflects that the Complainants are responsible for payment of the

water utilities. Paragraph #14 of the Lease states in pertinent part that the Complainants “without prior written permission ... will not paper, paint or decorate...”

3. Based on Paragraph #4 of the Lease and the testimony of the Respondent’s agent Daniel Oxenburg, the amount of the original Security Deposit paid by the Complainants was \$3050.00.

4. The Commission finds credible the testimony that the Complainant and the Respondent’s Agent agreed to terminate the tenancy effective June 30, 2015, prior to the scheduled expiration of the Lease, that the Complainants fully vacated the Property effective June 30, 2015; and that the Complainants paid rent in full through that date.

5. The Commission finds that the Complainants’ tenancy terminated effective June 30, 2015.

6. The Commission finds that on July 28, 2015, within forty-five days of the Complainants’ termination of tenancy, the Respondent, through her Agent, sent the Complainants a partial return of the Security Deposit in the amount of \$1,342.66, and an itemized list of damages together with a statement of costs, which states in pertinent part:

*** Deductions Tenant Security Deposit		
	\$ 100.00	Minor Cruz/ Sewer Backup 11/14
	\$ 650.00	Minor Cruz/Touch up painting/repairs
	\$ 72.34	WSSC/Last water Bill Unpaid by Tenant
	\$ 555.00	Luis Rivera/Landscaping
	\$ 280.00	Inez Lopez Cleaning Services
	\$1,657.34	Total Deductions Tenant Security Deposit

7. The Commission finds that interest accrued on the Complainants’ Security Deposit in the amount of \$56.90.

8. The Commission finds that the Respondent failed to acknowledge or return interest accrued on the Complainants’ Security Deposit in the amount of \$56.90.

9. The Commission concludes that the Respondents did not provide probative evidence to support the contention that the Complainants were negligent in the maintenance of the plumbing system at the Property, or that any actions on the part of the Complainants caused plumbing issues/sewer backup at the Property during their tenancy. Absent that evidence, the \$100.00 charge assessed against the security deposit for “Minor Cruz/sewer backup 11/14” is disallowed and is not the Complainants’ responsibility.

10. The Commission finds credible the testimony of the Complainant Fatih Oke and the Respondent’s Agent Daniel Oxenburg that the Complainant had painted interior walls at the Property without the Respondent’s written permission, and finds credible that, as a result of the Complainants’ actions, the interior walls of the Property were damaged in excess of ordinary wear and tear. The Commission further finds that the Respondent incurred an actual cost of \$650.00 to paint/repair the walls, which cost is the responsibility of the Complainants.

11. The Commission finds credible the Complainants’ acknowledgment that they did not pay the final Washington Suburban Sanitary Commission (WSSC) bill, and that the Respondent incurred an actual cost of \$72.34 to pay the final WSSC bill, which cost is the responsibility of the Complainants.

12. The Commission finds credible the Complainants' acknowledgment that they did not clean the gutters of the house at the termination of their tenancy. The Commission further finds that the Respondent incurred an actual cost of \$65.00 (from \$555.00 Luis Rivera/Landscaping billing) to clean the gutters, which cost is the responsibility of the Complainants.

13. The Commission finds that the Respondents did not provide probative evidence to support the contention that the Complainants damaged the exterior of the Property in excess of ordinary wear and tear. Absent such evidence, \$490.00 of the charge assessed against the security deposit for Luis Rivera/Landscaping (\$555.00 less the \$65.00 gutter cleaning noted above) is disallowed, and not the Complainants' responsibility.

14. The Commission finds credible the photographic evidence and testimony of Respondent's Agent Daniel Oxenburg that there were areas of the home that were left excessively dirty after the Complainants' termination of tenancy. The Commission also finds credible the video evidence and testimony of Complainant Fatih Oke that not all areas of the home were excessively dirty. Therefore, based on the evidence and testimony, the Commission finds that \$140.00 (one-half of the \$280.00 bill) of the charges assessed against the security deposit for Inez Lopez Cleaning Services are permissible and are the Complainants' responsibility, and \$140.00 (one-half of the \$280.00 bill) of the charges assessed are disallowed and not the Complainants' responsibility.

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 Respondent's failure to pay the Complainants interest which had accrued on their security deposit in the amount of \$56.90 constitutes a violation of Section 8-203 (e) (1) of the Real Property Article, and has created a defective tenancy.

2. The Respondent was justified in withholding from the security deposit plus accrued interest, charges assessed: to repair/paint the walls in the amount of \$650.00; to pay the final WSSC bill in the amount of \$72.34; to pay gutter cleaning in the amount of \$65.00; and cleaning in the amount of \$140.00, in the total amount of \$927.34, pursuant to Section 8-203(f)(1)(i) of the Real Property Article.

3. The Respondent was not justified in withholding from the security deposit plus accrued interest charges assessed to: repair plumbing landscaping/sewer backup in the amount of \$100.00; landscaping/exterior work in the amount of \$460.00; or partial cleaning in the amount of \$140.00, in the total amount of \$700.00, for costs not in excess of ordinary wear and tear, and therefore the withholding constitutes a violation of Section 8-203(f)(1)(i), and Section 8-203(f)(2) of the Real Property Article.

4. The Respondent's failure to return \$3,106.90 to the Complainants, which amount represents the security deposit (\$3,050.00) plus accrued interest (\$56.90), less justified withholdings (\$927.34), 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 Respondent's 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.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondent must pay the Complainants **\$836.90**, which sum represents the Complainants' security deposit (\$3,050.00) plus accrued interest (\$56.90), less payment already refunded (\$1,342.66) and permissible withholdings for damages, cleaning and WSSC Utility (\$927.34).

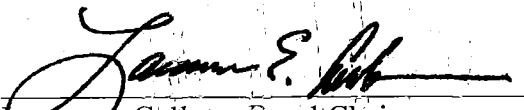
Commissioner Terri Torain, Commissioner Galia Steinbach and Commissioner Lawrence Culleen, Panel Chairperson, unanimously concurred in the foregoing decision.

To comply with this Order, Respondent Tamineh Farhadyeh 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 Fatih Oke and Asuman Oke, in the full amount of \$836.90.

The Respondent Tamineh Farhadyeh, 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, she must post a bond with the Circuit Court in the amount of the award (\$836.90) if she seeks a stay of enforcement of this Order.


Lawrence Culleen, Panel Chair
Commission on Landlord-Tenant Affairs