

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

In the matter of:

Paul Eyong and Rosalie Munongo

Complainants

V.

Bhupinder Singh

Respondent

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Case No. 35567

Rental Facility: 3822 Swan House Court, Burtonsville, MD (License # 41634)

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 26th day of April, 2016, found, determined, and ordered, as follows:

BACKGROUND

On November 16, 2015, Paul Eyong and Rosalie Munongo ("Complainants"), filed a complaint with the Office of Landlord-Tenant Affairs ("Office") within the Department of Housing and Community Affairs ("Department"), against Bhupinder Singh ("Respondent") in which they alleged that the Respondent failed to refund their security deposit plus accrued interest after the termination of their tenancy.

The Respondent contends that: (1) the Complainants moved-out of the Property owing rent; (2) the Complainants damaged the Property in excess of ordinary wear and tear during their tenancy; (3) costs were incurred to repair the damages which justified the withholding of the Complainants' security deposit plus interest; and (4) the Complainants still have an outstanding balance of \$4,245.00 due to damages and unpaid rent.

The Complainants are seeking an order from the Commission requiring the Respondent to refund their security deposit (\$1,735.00), plus accrued interest (\$364.35) for a total of \$2,099.35 and imposing a penalty of up to three times that amount based on the Respondent's unreasonable withholding of their security deposit.

After determining that the complaint was not susceptible to conciliation, the Department referred this case to the Commission for its review, and on March 1, 2016, the Commission voted to hold a public hearing on April 12, 2016. The public hearing in this matter was held on April 12, 2016.

The record reflects that the Complainants and the Respondent were given proper notice of the hearing date and time. Present and sworn at the hearing and presenting evidence were the Complainant Paul Eyong; Complainant Rosalie Munongo did not attend the meeting because she stayed home with a sick child; and, the Respondent Bhupinder Singh. Also present was Susana Capobianco, Investigator, Office of Landlord-Tenant Affairs.

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, without objection, the following exhibit offered by the Complainant: (1) Copy of an e-mail dated March 19, 2015, showing the Complainant's purchase of a Samsung Electric range listed on Craigslist, identified as Complainant's Exhibit No. 1. The Commission also entered into the record, without objection, the following exhibit offered by the Respondent: (1) A package composed of 70 pages, which included documentation related to the case (estimates, invoices, pictures, checks, etc.), identified as Respondent's Exhibit No. 1.

FINDINGS OF FACT

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

1. The Commission finds that on April 10, 2008, the Respondent and the Complainants signed a one year lease agreement ("Lease") for the rental of the Property, which commenced on April 15, 2008, and expired on April 30, 2009, for a monthly rent of \$1,735.00 (Commission Exhibit No. 1 – Pages 4 through 11).

2. The Commission finds that on or about April 10, 2008, the Complainants paid the Respondent a security deposit, in the amount of \$1,735.00; which amount is receipted in the Lease (Commission Exhibit No. 1 – Page 5).

3. The Commission finds that the Lease signed by the parties does not contain all of the disclosures required by Section 8-203 (c), "Security deposits", or Section 8-203.1, "Receipts for security deposits", of the Real Property Article (Commission Exhibit No. 1 – Page 5 and 6).

4. The Commission finds credible Complainant Eyong's testimony that at the expiration of the lease term they remained in the Property as tenants on a month to month basis and that sometime during the month to month tenancy (no specific date) the rent was increased verbally to \$1,755.00 per month.

5. The Commission finds credible Complainant Eyong's and Respondent's assertion that in early June 2015, on or about June 6, 2015, the Complainant advised that he and Complainant Munongo would be moving out by July 31, 2015.

6. The Commission finds credible Complainant Eyong's testimony that on July 30, 2015, a walkthrough inspection was performed by him and the Respondent.

7. The Commission finds credible Complainant Eyong's testimony that he and Complainant Munongo vacated the Property on July 31, 2015, and paid rent to the Respondent through that date (Commission Exhibit No. 1 – Page 17 and 18).

8. The Commission finds credible the Respondent's testimony that he found the keys to the Property under the front door mat on August 5, 2015.

9. The Commission finds that by a letter dated November 9, 2015 – 101 days after the Complainants vacated the Property - (Commission Exhibit No. 1 – Page 12 and 13), Attorney Harnam Arneja, advised the Complainants of the following:

“...we have been retained by Mr. Bhupinder Singh to recover the damages caused to the property at 3822 Swan House Court, Burtonsville, MD 20806, leased by you pursuant to the Deed of Lease dated April 13, 2008 (hereinafter referred to as the “Lease”), and unpaid amounts due under the said Lease.

2. By your notice, you were supposed to vacate the leased premises on June 30, 2015, but without giving any 30-day notice and notice of check-out inspection pursuant to Section 34 of the said lease, you vacated the premises on July 5, 2015. Upon inspection of the leased property, the following damages were noticed and repaired at the Landlord's expenses.

3. You had the responsibility of removing everything and leave the premises broom clean. You left a very heavy big table and steel drums, which Landlord had to remove at his expense.

4. Pursuant to Section 19 of the Lease, it was your responsibility to using and operating all appliances, equipment and systems in a safe and reasonable manner. The washier, dryer, refrigerator, kitchen cabinet door, closet door, kitchen fan, vents, blinds, and bay window. Landlord had to get all repaired or replaced at his expense.

5. Pursuant to Section 20 of the Lease, you were required to obtain written consent to change the paint color on the walls. Without such permission, you changed the color of the walls from off-white to pink color. Landlord had to again change pink color to off-white at his expense.

6. The following expenses were incurred by the Landlord on repairs, replacement, etc. of the above items:

A. Change paint from pink to off-white	\$1,800
B. Replacement of washer	550
C. Repairs to dryer, refrigerator, kitchen cabinet	
Door, closet door	650
D. Repairs to bay window	100
E. Replace broken kitchen fan	150
F. All room vents fixed	250
G. All blinds replaced	350
H. Remote for master bedroom remote for fan	95
I. Removal of furniture and steel drums	150

The following amounts are due from you under the said Lease:

J. Rent for the month of July, 2015	1,755
K. Unpaid water and sewer bill	130
Total	5,980
Deduct Security Deposit	1,735
Amount Due	4,245

Please send us a check in the amount of \$4,245 payable to the Landlord, Bhupinder Singh..."

10. The Commission finds that the November 9, 2015, letter, was mailed to the Complainants, via certified mail, on the same day to: 1204 Cabin Wood Place, Silver Spring, MD 20904 (Respondent's Exhibit No. 1 – Page 44).

11. The Commission finds credible Complainant Eyong's testimony that he did not receive any written communication from the Respondent regarding the disposition of the security deposit plus interest, until after he contacted the Office of Landlord Tenant Affairs.

12. The Commission finds credible the Respondent's admission that he did not send a list of damages to the Complainants because he did not know their forwarding address.

13. The Commission finds that the Respondent paid for a WSSC bill relative to water consumption at the Property in the amount of \$148.33 (Commission Exhibit No. 1 – Page 14) on September 28, 2015 – 59 days after the Complainants vacated the Property.

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. Pursuant to Section 8-203(g) (1) and (2) of the Real Property Article, Maryland Code, "If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under subsection (f) (1) of this section together with a statement of the cost actually incurred"; and, "If the landlord fails to comply with this requirement, he forfeits the right to withhold any part of the security deposit for damages." The Commission concludes that the Respondent failed to send the Complainants, within 45 days after the termination of their tenancy, a list of damages claimed against their security deposit. This failure constitutes a violation of Section 8-203 (g) (1) of the Real Property Article, and has created a defective tenancy. Therefore, pursuant to Section 8-203 (g) (2), the Respondent has forfeited his right to withhold any portion of the Complainants' security deposit for damages.

2. The Commission concludes that the Respondent's failure to handle and dispose of the Complainants' security deposit (\$1,735.00) 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.

3. The Commission concludes that the Respondent's failure to credit or pay the Complainants any amount of interest (\$364.35) 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.

4. The Commission concludes that the failure by the Respondent to refund the Complainants' security deposit plus accrued interest was unreasonable and constituted a violation of Section 8-203 (e)(1) 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 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. While there is no history of the Respondent appearing before the Commission, his lack of cooperation with the Department's dispute resolution process and his own admission of not handling the security deposit disbursement in accordance with the law, rises to the level of bad faith and egregiousness necessary to award a penalty. Therefore, an additional award of \$1,049.68 as a penalty is granted.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondent must pay the Complainant \$3,149.03 which sum represents the Complainants' security deposit (\$1,735.00), plus accrued interest (\$364.35), plus \$1,049.68 penalty.

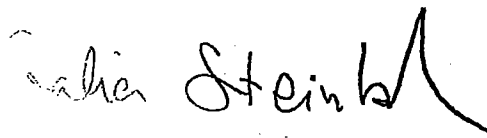
Commissioner Dillon Clark, Commissioner Charles Marschke, and, Commissioner Galia Steinbach Panel Chairperson, unanimously concurred in the foregoing decision.

To comply with this Order, Respondent, Bhupinder Singh, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order, a check, made payable to Paul Eyong and Rosalie Munongo, in the amount of \$3,149.03.

The Respondent, Bhupinder Singh, 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 after 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, he must post a bond with the Circuit Court in the amount of the award (\$3,149.03) if a stay of enforcement of this Decision and Order is sought.



Galia Steinbach, Panel Chairperson
Commission on Landlord-Tenant Affairs