

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

In the matter of:

Pan Gu and Yimeng Wang

Complainants

V.

Sina Farzin and Nina Farzin

Respondents

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Case No. 35760

Rental Facility: 11104 Welland Street, North Potomac, MD (License # 58359)

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

BACKGROUND

On March 21, 2016, Pan Gu and Yimeng Wang (“Complainants”), filed a complaint with the Office of Landlord-Tenant Affairs (“Office”) within the Department of Housing and Community Affairs (“Department”), against Sina Farzin and Nina Farzin (“Respondents”) in which they alleged that the Respondents assessed unjust charges against their security deposit plus interest after the termination of their tenancy.

The Respondents contend that the Complainants: (1) moved-out owing the last month’s rent (January 2016), 2) damaged the Property beyond ordinary wear and tear during their tenancy; and, 3) costs were incurred to repair the damages which justified the withholding of the Complainants’ security deposit plus interest. Furthermore, the Respondents claim the Complainants have an outstanding balance of \$3,050.00 with them.

The Complainants are seeking an order from the Commission requiring the Respondents to refund them their security deposit (\$8,200.00), plus interest (\$123.00), minus the January 2016 rent (\$4,100.00); for a total of \$4,423.00; and, imposing a penalty of up to three times that amount based on the Respondents’ 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 June 7, 2016, the Commission voted to hold a public hearing on August 30, 2016. The public hearing in this matter was held on August 30, 2016.

The record reflects that the Complainants and the Respondents were given proper notice of the hearing date and time. Present and sworn at the hearing and presenting evidence were Complainant Pan Gu; Respondents, Sina Farzin and Nina Farzin; and, Commission's witness Raul Cepeda, Contractor/owner of GNC Construction Company, LLC. Also present were Charles C. Lamari, Respondents' Attorney; and, 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 evidence one exhibit offered by the Respondents, copy of a proposal dated February 9, 2016, submitted by GNC Construction Co., LLC relative to work to be done at the Property, for a total amount of \$9,150.00, identified as Respondents' Exhibit No. 1. The Commission also entered into evidence one exhibit offered by the Complainants, a series of five colored pictures (which appear to be duplicates of the ones included in Commission Exhibit 1 – Pages 94, 96, 97, 98, 99 and 100), identified as Complainants' 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 December 29, 2014, Mike Aubrey as the Agent for the Respondents and the Complainants signed a one-year lease agreement ("Lease") for the rental of the Property, which commenced on January 1, 2015, and expired on December 31, 2015, for a monthly rent of \$4,100.00 (Commission Exhibit No. 1 – Pages 4 through 19).

2. The Commission finds that on or about December 29, 2014, the Complainants paid a security deposit in the amount of \$8,200.00, which is properly received in the Lease (Commission Exhibit No. 1 – Page 5).

3. The Commission finds that by a letter dated December 5, 2015, Mike Aubrey, Agent for the Respondents, advised the Complainants that they should vacate the Property on January 5, 2016 (Commission Exhibit No. 1 – Page 20).

4. The Commission finds credible Complainant Gu and Respondents' testimony that the Complainants vacated the Property on January 28, 2016.

5. The Commission finds credible Complainant Gu's testimony that she did not pay the last month's rent (January 2016).

6. The Commission finds that an initial pre-listing inspection was performed by the Respondents' Agent on December 29, 2014 (Commission Exhibit No. 1 – Pages 23 through 25).

7. The Commission finds that on January 16, 2015, after the Complainants moved into the Property, they performed a move-in inspection (Commission Exhibit No. 1 – Pages 26 through 28).

8. The Commission finds that both reports show deficiencies with the walls throughout the Property (dirty, big nail holes, existing nails on them, etc.), damage to the wooden floors, signs of leakages (basement), washer and dryer dysfunctional, dirty carpets, and, fireplace not operable (Commission Exhibit No. 1 – Pages 23 through 28).

9. The Commission finds credible the Complainants' and the Respondents' testimony that a final walkthrough inspection was conducted on January 28, 2016, by all the parties, including Charles C. Lamari, Attorney for the Respondents. There is no report on file.

10. The Commission finds that by a letter dated March 10, 2016 (Commission Exhibit No. 1 – Pages 48 and 49), Charles C. Lamari, Attorney for the Respondents, informed the Complainants in pertinent part of the following:

“...On December 5, 2015, you received a termination of Lease correspondence requiring you to vacate the Property by January 31, 2016, and obligating you to pay rent through that date. You breached the Lease by failing to make January 2016's rental payment. You further breached the Lease by causing damage to the Property beyond normal wear and tear. Specifically, significant amounts of crayon markings and drawings were viewed throughout the Property during the final walk-through. Furthermore, the walk-through revealed damage to the wood flooring and carpet, in excess of normal wear and tear. Restoring the Property will require painting the crayon covered walls, repairing the wood flooring and cleaning the stained carpets, which will cost the Landlord Seven Thousand One Hundred Fifty Dollars and 00/100(\$7,150.00) pursuant to the enclosed **estimate** prepared by GNC Construction Co., LLC. (*emphasis added*). As previously mentioned, Landlord is also owed Four Thousand One Hundred Dollars and 00/00 (\$4,100.00) for January's rent. As such, Landlord suffered damages in the amount of Eleven Thousand Two Hundred Fifty Dollars and 00/100 (\$11,250.00), an amount in excess of the Eight Thousand Two Hundred Dollars and 00/100 security deposit...”

Furthermore: “...Accordingly, Landlord is withholding the security deposit for damages suffered by your breach of the Lease. Enclosed please find a Statement of Account detailing the deductions from your security deposit. As you can see, a deficiency remains in the amount of Three Thousand Fifty Dollars and 00/100 (\$3,050.00), which continues to be due and owing to the Landlord...”

11. The Commission finds that enclosed with the March 10, 2016 (Commission Exhibit No. 1 – Page 50), was the following:

“...Statement of Account.”

Pang Gu
Yimeng Wang
12311 Sweetbough Court
North Potomac, Maryland 20878

Re: 11104 Welland Street
North Potomac, Maryland 20878

Security Deposit	\$8,200.00
January 2016 rent	-4,100.00
Amount for repairs	<u>-7,150.00</u>
Deficiency	\$3,050.00..."

12. The Commission finds that also enclosed with the March 10, 2016, letter there is an undated Invoice from GNC Construction Co., LLC (Commission Exhibit No. 1 – Pages 51 through 53), detailing work to be performed at the Property, for a total amount of \$7,150.00.

13. The Commission finds credible the Contractor's testimony that he was not able to determine when the work was performed at the Property; and/or when he was paid for said work.

14. The Commission finds that the Contractor was not able to provide a dated Invoice relative to the work performed at the Property; and was not clear on the administrative process followed to turn his proposal/estimate into an Invoice.

15. The Commission finds that a Check No. 2255, dated March 31, 2016, was issued by the Respondents to GNC Construction Co., LLC in the amount of \$7,150.00 (Commission Exhibit No. 1 – Page 60).

16. The Commission finds credible Complainant Gu's testimony that they did not damage the Property in excess of ordinary wear and tear during her tenancy, as shown in the pictures she submitted for the record (Commission Exhibit No. 1 – Pages 94 through 102 and, Complainant's Exhibit No. 1).

17. The Commission finds that based on the pictures submitted by the Respondents (Commission Exhibit No. 1 – Pages 103 through 117), there is not enough probative evidence that excessive damage was caused to the Property in general and/or to the walls in particular, by the Complainants.

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 Respondents did send the Complainants, within 45 days after the termination of their tenancy, a list of damages claimed against their security deposit but failed to include a statement of the **cost actually incurred** (*emphasis added*). 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 Respondents have forfeited their right to withhold any portion of the Complainants’ security deposit for damages.

2. The Commission concludes that the Respondents’ failure to handle and dispose of the Complainants’ security deposit (\$8,200.00) 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 Respondents’ failure to credit or pay the Complainants any amount of interest (\$123.00) 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 because the Complainants vacated the Property on January 28, 2016, they are rent responsible for the whole month of January 2016 (\$4,100.00) and they also must pay a late fee in the amount of \$ 205.00.

5. Although the Commission concludes that the failure by the Respondents to refund a portion of the Complainants’ security deposit was unreasonable and constitutes a violation of Section 8-203 (e)(4) 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 Landlord’s conduct in wrongfully withholding all or part of the Complainants’ security deposit, whether the Landlord acted in good faith, and any prior history of wrongful withholding of a security deposit. Based on the evidence, the Commission concludes that the Respondents’ conduct does not rise to the level of bad faith or egregiousness necessary to award a penalty. 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 Complainant **\$4,018.00** which sum represents the Complainants’ security deposit (\$8,200.00), plus accrued interest (\$123.00), minus the rent for the month of January 2016 (\$4,100.00) and late fee (\$205.00).

Commissioner Terri Torain, Commissioner Jeffrey Slavin, and Commissioner Lawrence Cullen Panel Chairperson, unanimously concurred in the foregoing decision.

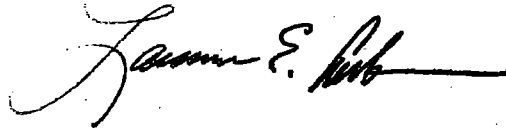
To comply with this Order, Respondents, Sina Farzin and Nina Farzin, must forward to the Office of Landlord-Tenant Affairs, 1401 Rockville Pike, 4th Floor, Rockville, MD 20852, within thirty (30) calendar days of the date of this Decision and Order, a check, made payable to Pan Gu and Yimeng Wang, in the amount of \$4,018.00.

The Respondents, Sina Farzin and Nina Farzin, are 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 Respondents have not, within thirty (30) calendar days of 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 Respondents choose to appeal the Commission's Order, they must post a bond with the Circuit Court in the amount of the award (\$4,018.00) if a stay of enforcement of this Decision and Order is sought.



Lawrence Culleen, Panel Chairperson
Commission on Landlord-Tenant Affairs