BEFORE THE

COMMISSION ON LANDLORD-TENANT AFFAIRS

FOR MONTGOMERY COUNTY, MARYLAND

In the Matter of Jane Van Ryan, Jordan Van Ryan and Kara Davis **Complainants**	
v.	***Case No.*** **7788**
Lewis I. Winarsky Rental Facility: 8717 Plymouth Street #2, Silver Spring, Maryland (License #017437) **Respondent**	

DECISION AND ORDER

The above-captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland (the "Commission"), pursuant to Sections 29-14A, 29-38, and 29-40 of the Montgomery County Code, 1994, as amended ("County Code"), and having considered the testimony and evidence of record, it is, therefore, this 6th day of May, 1999, found, determined and ordered as follows:

BACKGROUND

On April 29, 1998, Jane Van Ryan, Jordan Van Ryan and Kara Davis (the "Complainants"), former tenants at 8717 Plymouth Street, #2, Silver Spring, MD (the "Apartment"), a licensed multi-family rental unit in Montgomery County, MD, filed a formal complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs, (the "Department"), in which they alleged that Lewis I. Winarsky, owner of the Apartment (the "Respondent"): (1) executed a "Settlement Agreement and Release" with them that, in addition to terminating their tenancy as of June 30, 1997, provided that, "...the security deposit of $685 shall be returned to the Tenants in accordance with the applicable laws of Maryland;" (2) failed to issue them an itemized list of damages he was claiming against their security deposit within thirty (30) days after the termination of their tenancy, in violation of § 8-203(h)(1) and (2) of the Real Property Article, Annotated Code of Maryland, 1996, as amended ("State Code"); and (3) failed to refund their security deposit within forty-five (45) days after the termination of the

tenancy, in violation of § 8-203(f)(1) of the State Code. The Complainants are seeking the return of their entire security deposit of $685.00 plus a threefold penalty ($2,055.00), pursuant to § 8-203(c), § 8-203(d), and § 8-203(f) of the State Code.

In response to the above-referenced allegations, the Respondent contends that: (1) a list of damages was faxed to Complainants' attorney on July 29, 1997, within thirty (30) days after the termination of the Complainants' tenancy; (2) the Complainants did not vacate the Apartment until July 2, 1997, two days after termination of the lease; (3) interest was applied to Complainants' security deposit; and (4) a check for $54.19, representing the balance of the security deposit was mailed to Complainants' last known address.

After determining that the complaint was not susceptible to conciliation, the Department duly referred this case to the Commission for review, and on December 1, 1998, the Commission accepted jurisdiction of the case and scheduled a public hearing which commenced and concluded on January 19, 1999.

The record reflects that the parties were given proper notice of the hearing date and time. Present at the hearing and presenting testimony and evidence were: Complainant Jane Van Ryan on behalf of herself, Jordan Van Ryan and Kara Davis and one witness she called, David Banks, Respondent Lewis I. Winarsky and two witnesses he called, George Mader, maintenance man, and Susan Carroll, a resident at the Apartment complex. Mr. Winarsky was represented at the hearing by attorney Robert A. Plumb, Jr.

Without objection from the Complainants or the Respondent, the Commission entered into the record of the hearing the case file compiled by the Department, identified as Commission's Exhibit No. 1, and a copy of a "Montgomery County Police Home Security Survey," identified as Commission's Exhibit No. 2.

Without objection, the Commission also accepted into evidence at the hearing two (2) documents offered by the Complainants: (1) a copy of the "Settlement Agreement and Release" executed by the Complainants and the Respondent terminating the tenancy, identified as Complainants' Exhibit No. 1; and, (2) a copy of the Lease agreement ("Lease") executed by the parties, identified as Complainants' Exhibit No. 2.

Without objection, the Commission also accepted into evidence at the hearing four (4) documents offered by the Respondent: (1) a letter dated July 29, 1997, from Respondent's attorney, Robert A. Plumb, Jr. to Complainants' attorney, Matthew D. Banks, outlining damages to the Property, identified as Respondent's Exhibit No. 1; (2) a letter dated August 5, 1997 from Matthew D. Banks to Mr. Plumb, identified as Respondent's Exhibit No. 2; (3) a Notice to Quit and Vacate from Mr. Plumb to the Complainants, dated May 27, 1997, identified as Respondent's Exhibit No. 3; and (4) a letter from the Respondent to Complainants Jordan Van Ryan and Kara Davis dated May 8, 1997, alleging certain breaches of the Lease, identified as Respondent's Exhibit No. 4.

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 February 15, 1997, Complainants and Respondent entered into a one year Lease for the rental of the Apartment which commenced on March 1, 1997, and was due to expire as of February 28, 1998 (see Complainants' Exhibit No. 2). Jane Van Ryan, the mother of Complainant Jordan Van Ryan and aunt of Complainant Kara Davis, was a co-signer to the Lease, but did not reside at the Apartment.

2. At the commencement of the tenancy, the Complainants paid the Respondent a security deposit in the amount of $685.00, the receipt of which is contained at Paragraph 6 of the Lease.

3. During the term of the Lease the Complainants and Respondent mutually agreed to prematurely terminate the Lease and the tenancy as of June 30, 1997, and entered into a "Settlement Agreement and Release" for that purpose with certain terms and conditions. (See Complainant's Exhibit No. 1).

4. Regarding the disposition of the Complainants' security deposit, the "Settlement Agreement and Release" stipulates that, "[t]he parties mutually agree that the security deposit of $685.00 shall be returned to the Tenants in accordance with the applicable laws of Maryland" and further that, "[t]he parties mutually agree to participate, either in person or through an authorized representative, in a walk-through of the Premises on June 30, 1997 ..." and that "[t]he Landlord may not claim that the Tenants are responsible for any other damage not noted on the writing signed by the Parties at the time of the walk-through."

5. The Respondent testified that he was out of town on June 30, 1997, and that he asked his attorney, Mr. Plumb, to contact his maintenance man, George Mader, to conduct the final walk-through inspection on that date. He further testified that it was the Complainants' obligation to make arrangements for the final walk-through inspection and they failed to do so. Mr. Mader testified that he was not notified by the Respondent or Mr. Plumb to be present on June 30th for the final walk-through inspection and therefore, he did not go to the Apartment until July 1, 1997, at which time he observed that the Complainants had vacated. The Commission finds that the "Settlement Agreement and Release" does not contain any provision that required the Complainants to contact the Respondent regarding the time and date of the final inspection, only that they be present on June 30th, which they were. The Commission further finds that neither the Respondent nor his authorized representative, Mr. Mader, were present for a walk-through inspection on June 30, 1997, and as a result, no list of damages was produced and signed by the parties on that date.

6. The Commission credits the testimony of Complainant Jane Van Ryan and her witness, David Banks, that the Complainants were present at the Apartment on June 30, 1997, that they vacated on that date, and that the Apartment was left in "broom clean" condition with no damage in excess of ordinary wear and tear.

7. The Respondent, through his attorney Mr. Plumb, issued to the Complainants' attorney, Matthew D. Banks, by facsimile transmission on July 29, 1997, a list of damages the Respondent was claiming against the Complainants' security deposit itemized as follows:

Paint Apartment	$400.00
Clean Apartment	125.00
Replace Broken Windows	120.00

Replace Locks	40.00
Rent 7/1/97-7/2/97	44.19
Total	$729.19

8. The Respondent testified at the hearing that in early August 1997, within 45 days after the termination of the Complainants' tenancy, he sent a partial security deposit refund check, in the amount of $54.19, to the Complainants at their last known address, the address of the Apartment, and that the check was never cashed or returned. The Respondent failed to provide any probative evidence to support this claim. The Commission finds therefore that the Respondent failed to refund any portion of the Complainants' security deposit after the termination of their tenancy.

9. The Respondent assessed $44.19 against the Complainants' security deposit for non-payment of two days rent, July 1 and 2, 1998 (See page 2 of Commission's Exhibit No. 1). The Respondent and Respondent's witness, Mr. Mader, failed to provide any probative testimony or evidence that the Complainants were still in possession of the Apartment on July 1, 1997. The Commission credits the testimony of the Complainant Jane Van Ryan and her witness, David Banks, that the Complainants vacated the Apartment on June 30, 1997, in accordance with the above-referenced "Settlement Agreement and Release," and that their tenancy terminated as of that date. Therefore, the Commission finds that no rent is owed by the Complainants beyond June 30, 1997, and the Respondent's assessment of $44.19 for non-payment of rent against the Complainants' security deposit is unsupported, unreasonable and is disallowed.

10. The Respondent assessed $400.00 against the Complainants' security deposit for painting the Apartment (See page 2 of Commission's Exhibit No. 1). The Commission credits the testimony of the Respondent that it is his standard business practice to re-paint all apartment units between tenancies, that the cost of re-painting is between $400.00 and $700.00, and that the cost of such re-painting is considered normal wear and tear. The Commission also credits the testimony of the Respondent that the Complainants' Apartment had been completely re-painted prior to their tenancy at a cost of $750.00. On July 2, 1997, the Respondent paid Alexandros Contractors (See page 31 of Commission's Exhibit No. 1) $400.00 to, as the Respondent described it, "freshen up" the paint job after the termination of the Complainants' tenancy which he charged against their security deposit. The Commission finds that the Complainants did not damage the interior painted surfaces of the Apartment beyond normal wear and tear as a result of their tenancy. The Commission further finds that Respondent hired a contractor to touch-up the existing paint job in the Complainants' Apartment and that such touch-up is a normal turn-over or re-decoration expense. Therefore, the Respondent's assessment of $400.00 for painting charged against the Complainants' security deposit is unreasonable and is disallowed.

11. The Respondent assessed $125.00 against the Complainants' security deposit for cleaning of the Apartment (See page 2 of Commission's Exhibit No. 1). The Commission credits the testimony of the Respondent that it is his standard business practice to clean all apartment units between tenancies, and that his cleaning contractor charges him the same amount to clean an apartment whether or not is has been left in a clean or unclean condition. Although the Respondent's contractor, A.P. Services, Inc. on July 21, 1997, charged the Respondent $125.00 for "turnover cleaning" and "trash removal" of the Complainants' Apartment (See page 36 of Commission's Exhibit No. 1), approximately three weeks earlier, on July 3, 1997, another contractor, G.E.M. Enterprises, charged the Respondent $20.00 to "Sweep unit and reclean trash area" of the Complainants' Apartment (See page 27 of Commission's Exhibit No. 1). The

Commission credits the testimony of Complainant Jane Van Ryan and her witness, David Banks, that at the time the Complainants vacated the Apartment, June 30, 1997, it was left in a broom-clean condition and free of any trash and debris. The Commission finds that the cleaning of the Complainants' Apartment after the termination of their tenancy was not to remove any trash and debris or to repair any damage caused by the Complainants in excess of ordinary wear and tear, but was a normal turn-over or re-decoration expense, and therefore, Respondent's assessment of $125.00 for cleaning charged against the Complainants' security deposit is unreasonable and is disallowed.

12. The Respondent assessed $120.00 against the Complainants' security deposit for the replacement of three (3) broken window panes, $80.00 to replace two panes of glass in the Apartment, and $40.00 to replace one pane of glass in the hallway in the Apartment complex (See pages 2 and 27 of Commission's Exhibit No. 1). The Commission credits the testimony of Complainant Jane Van Ryan that the Apartment had been burglarized on three occasions during the tenancy and on each occasion the burglar broke a window to gain entry. She also testified that these incidents were reported to the Respondent's maintenance man, Mr. Mader, and she requested that the windows be repaired and even offered to pay for such repair. In support of her testimony, the Complainant introduced into evidence at the hearing a copy of a "Montgomery County Police Home Security Survey" (See Commission's Exhibit No. 2), dated June 22, 1997, from Officer M. Lewis which states that the Complainant was a "Prior burglary victim" and that "There is a balcony outside the window used for entry. Window needs to be locked at all times." The Complainant also testified that because of the burglaries she feared for the safety and well being of her daughter, Jordan Van Ryan, and her niece, Kara Davis, and that safety was the main reason she wanted to terminate the tenancy prematurely. The Commission credits the testimony of the Respondent that the three windows were broken for "at least a month or six weeks," and that, "...when they vacated the apartment, that's when the broken windows were replaced." The Commission was not swayed by the Respondent's testimony that the Complainants broke the windows. The Commission finds therefore that the Complainants did not break the three windows they were charged for replacing, that the Complainants properly reported the existence of the broken windows to the Respondent's representative pursuant to Paragraph 10(a) of the Lease; and the Respondent failed to respond or to repair the broken windows until after the Complainants vacated. The Respondent's assessment of $120.00 for replacing broken windows charged against the Complainants' security deposit is unsupported and unreasonable and is therefore, disallowed.

13. The Respondent assessed $40.00 against the Complainants' security deposit for the replacement of the door lock (See page 2 of Commission's Exhibit No. 1), claiming that the Complainants failed to return the keys. The Commission finds that no provision for the return of the keys is contained in the "Settlement Agreement and Release" executed by the parties. The Commission credits the testimony of Complainant Jane Van Ryan that it was mutually agreed by the Complainants and the Respondent that the Apartment keys would be returned to the Respondent or the Respondent's representative at the time of the final walk-through inspection of the Apartment on June 30, 1997. Based on the fact that the Respondent and/or his representative failed to appear at the final walkthrough inspection, the Complainants had no one to deliver the keys to. Therefore, the Respondent's assessment of $40.00 for changing the Apartment locks charged against the Complainants' security deposit is not damage in excess of ordinary wear and tear, is unreasonable and is disallowed.

14. Although the Respondent testified at the hearing that his witness, George Mader, would provide testimony regarding the specifics of any damages caused to the Apartment by the Complainants in excess of ordinary wear and tear, Mr. Mader testified that he did not clean or re-paint the Complainants' Apartment after they moved out, nor did he coordinate or supervise any cleaning or re-painting. Mr. Mader testified that he was paid $20.00 by the Respondent for "looking at" the Apartment on July 1st or 2nd after the Complainants vacated. Furthermore, the Respondent and his witness, Mr. Mader, failed to provide any probative evidence or testimony that the Apartment was left in an unclean condition or damaged in any way by the Complainants as a result of their tenancy, or that the Respondent incurred any actual expense to repair damage to the Apartment in excess of ordinary wear and tear. The Commission finds therefore that the Complainants' Apartment was not damaged in excess of ordinary wear and tear as a result of their tenancy and that the Respondent had no reasonable basis to withhold any portion of the Complainants' security deposit for damages or unpaid rent.

15. The Respondent failed to discharge his responsibility to be present for the final walkthrough inspection on the Apartment on June 30,1998, or to see to it that his representative was present for the inspection, pursuant to the terms and conditions of the "Settlement Agreement and Release."

16. The receipt for the payment of the Complainants' security deposit, which is contained in the written Lease (See Complainants' Exhibit No. 2), does not contain language informing the Complainants of their right to receive from the Respondent a written list of all existing damages or the procedure for requesting such a list, as required by § 8-203(c)(3) of the State Code.

17. The receipt for the payment of the Complainants' security deposit also does not contain language advising the Complainants' of their right to be present for a final walkthrough inspection of the Apartment or the procedure for making such a request, as required by § 8-203 (g)(1) of the State Code.

18. Based on the numerous violations of the State security deposit law caused by the Respondent relative to his acceptance, receipt, handling, and disposition of the Complainants' security deposit, including his: (a) failure to provide required disclosures to the Complainants at the time of payment of the deposit (§ 8-203(c)(3) and § 8-203(g)(1)); (b) failure to notify the Complainants by first class mail within thirty (30) days after the termination of their tenancy with a list of actual damages (§ 8-203(h)(1)); (c) assessment of damages that were not in excess of ordinary wear and tear (§ 8-203(g)(1) and (2)); and (d) assessment of unpaid rent when no rent was owed (§ 8-203(h)(1)); and, the fact that the Respondent failed to faithfully discharge his obligations under the terms and conditions of the "Settlement Agreement and Release" he negotiated and executed with the Complainants, the Commission finds that the Respondent had no reasonable basis to withhold any portion of the Complainants' security deposit after the termination of their tenancy.

19. The Commission further finds that the Respondent's conduct was willful and intended to deny the Complainants their rights under the State security deposit law, and was also an egregious attempt to deny the Complainants the refund of their security deposit to which they were rightfully entitled.

CONCLUSIONS OF LAW

1. The Respondent did not produce any probative or persuasive testimony or evidence that the Apartment was damaged beyond normal wear and tear as a result of the Complainants' tenancy or that he incurred any additional expenses in the normal course of preparing the Apartment to be re-rented after the termination of the Complainants' tenancy. The Commission concludes therefore, that the Apartment was not damaged beyond normal wear and tear by the Complainants as a result of their tenancy and, as a result, the Respondent's withholding of any portion of the Complainant's security deposit violated § 8-203(g)(1) and (2) of the State Code, and caused a defective tenancy.

2. Respondent's attorney Mr. Plumb sent the Complainants' attorney, Matthew D. Banks, an itemized list of damages the Respondent was claiming against the Complainants' security deposit on July 29, 1997. This list of damages was sent within thirty (30) days after the termination of the Complainants' tenancy by facsimile transmission, not first-class mail, as required by § 8-203(h)(1) of the State Code. The Commission concludes therefore, that the Respondent failed to present to the Complainants by first class mail directed to their last known address, within thirty (30) days after the termination of their tenancy, a written list of damages claimed against their security deposit, in violation of § 8-203(h)(1) of the State Code. The Respondent's failure to comply with this provision of the State Code has caused a defective tenancy and, pursuant to § 8-203(h)(2) of the State Code, he has forfeited his right to withhold any portion of the Complainants' security deposit for damages.

3. The Commission concludes that the "Settlement Agreement and Release" executed by the Complainants and the Respondent (See Complainants' Exhibit No. 1) is an addendum to the Lease that replaced Paragraph No. 15 of that Lease dealing with early termination or cancellation of the Lease under certain circumstances. Therefore, the failure of the Respondent and/or his authorizedrepresentative to conduct a final walk-through inspection of the Property in the presence of the Complainants on June 30, 1997, for the purpose of compiling a list of damages that may have been caused to the Apartment by the Complainants, violates the terms of the "Settlement Agreement and Release" and constitutes a breach of the Lease by the Respondent. Furthermore, pursuant to the terms and conditions of that "Settlement Agreement and Release," which stated that the Respondent was not entitled to claim any damages against the Complainants' security deposit that were, "...not noted on the writing signed by the Parties at the time of the walk-through," the Respondent may not claim that the Complainants are responsible for any damage to the Apartment because neither he nor his representative was present at the time of the walkthrough to write them down and have the Complainants sign such a writing.

4. The Respondent's failure to provide the Complainants with a written receipt for their payment of the security deposit that contained language informing them of their right to receive from the Respondent a written list of all existing damages and the procedure for requesting such a list, violated § 8-203(c)(3) of the State Code, and has caused a defective tenancy. Therefore, pursuant to § 8-203(d)(2) of the State Code, the Respondent is liable to the Complainants for threefold the amount of the security deposit as a penalty.

5. The Respondent's failure to provide the Complainants with a receipt for their payment of the security deposit that advised them of their right to request to be present for a final walk-through inspection of the Apartment to determine if any damage beyond normal wear and tear had been caused, or the procedure for requesting such an inspection, violated § 8-203(g)(1) of the State Code, and has caused a defective tenancy. Therefore, pursuant to § 8-203(g)(1) of the State

Code, the Respondent has forfeited his right to withhold any part of the Complainants' security deposit for damages.

6. Although the Respondent credited the Complainants' security deposit with accrued interest in the amount of $7.42, no such payment was made to the Complainants and, pursuant to § 8-203(f)(2) of the State Code, no interest is required to be paid to the Complainants by the Respondent since the tenancy was less than six months in duration.

7. The Respondent's assessment against the Complainants' security deposit of the costs of repairs that were not in excess of ordinary wear and tear constitutes a violation of § 8-203(g)(1) of the State Code, and has caused a defective tenancy.

8. The Respondent's assessment of unpaid rent against the Complainants' security deposit when no such rent was due constitutes a violation of § 8-203(g)(1) and § 8-203(g)(2) of the State Code, and has caused a defective tenancy.

9. The Respondent's failure to inform the Complainants of their rights pursuant to § 8-203(c)(3) and (d)(1) of the State Code renders the Respondent liable to the Complainants, pursuant to § 8-203(d)(2) of the State Code, for threefold the amount of their security deposit as penalty.

10. The Respondent's failure to refund any portion of the Complainants' security deposit within forty five (45) days after the termination of their tenancy was both willful and unreasonable, constitutes an egregious violation of § 8-203(f)(4) of the State Code and renders the Respondent liable to the Complainants for threefold the amount of the security deposit as a penalty. Furthermore, the Respondent's actions have caused a defective tenancy.

11. The Commission concludes that based on the Respondent's failure to provide the Complainants with a receipt for the payment of their security deposit that contained language informing them of their right to receive from the Respondent a written list of all existing damages and the procedure for making such a request, violated of § 8-203(c)(3) of the State Code, and therefore, pursuant to § 8-203(d)(2) of the State Code, he is liable to Complainants for threefold the amount of the security deposit as a penalty, offset by any damages and unpaid rent which he could have reasonably withheld, of which there were none.

12. The Commission concludes that based on the Respondent's willful, unreasonable and egregious withholding of the Complainants' entire security deposit when no damages beyond normal wear and tear were caused to the Apartment by the Complainants, and his claim of unpaid rent when no rent was owed, violated § 8-203(g)(1) and (2) and § 8-203(f)(4) of the State Code, and therefore, pursuant to § 8-203(f)(4) of the State Code, he is also liable to the Complainants for threefold the amount of their security deposit as a penalty.

13. Although the Commission concludes that the circumstances of this case warrant an award of treble damages under both § 8-203(d)(2) of the State Code and § 8-203(f)(4) of the State Code, thus the Respondent is subject to a penalty in excess of threefold the amount of the security deposit, the Commission chooses to award only a threefold penalty.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders the Respondent to pay the Complainants **$2,740.00**, which sum represents a refund of their entire security deposit ($685.00), plus a threefold penalty ($2,055.00).

The foregoing decision was concurred unanimously by Commissioners Mark Becker, Mattie Ligon and John Peterson, Panel Chairperson.

To comply with this Order, Respondent Lewis I. Winarsky must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within fifteen (15) calendar days of the date of this Decision and Order, a check payable to Jane Van Ryan, Jordan Van Ryan and Kara Davis in the full amount of $2,740.00.

You are hereby notified that Section 29-44 of the County Code declares that failure to comply withthis Decision and Order is punishable by $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 you comply with this Order.

In addition to the issuance of a $500.00 civil fine Class A violation, should the Commission determine that Respondent Lewis I. Winarsky has not, within fifteen (15) 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 the 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.

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Mark Becker, Commissioner

Commission on Landlord-Tenant Affairs