

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

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| In the Matter of Jeff and Deborah Noyes Complainants | |
| v. | Case No. 9017 |
| Frank and Audrey Martino Rental Facility: 5516 Charles Street, Bethesda, Maryland (Rental Facility License No. 007501) Respondents | |

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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, and the Commission having considered the testimony and evidence of record, it is therefore, this 19th day of January, 2000, found, determined, and ordered, as follows:

BACKGROUND

On August 20, 1998, Jeff and Deborah Noyes (the "Complainants"), former tenants at 5516 Charles Street, Bethesda, Maryland (the "Property"), a licensed single family rental facility in Montgomery County, Maryland, filed a formal complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs (the "Department") in which they allege that Frank and Audrey Martino, owners of the Property (the "Respondents") assessed unjust damages in the amount of \$1,110.57 against their \$3,300.00 security deposit plus accrued interest after the termination of their tenancy, in violation of § 8-203 (f)(1), (g)(1) and (h)(1) of the Real Property Article of the Annotated Code of Maryland, 1996, as amended ("State Code").

In response to the Complainants' allegations, the Respondents contend that the Complainants damaged the Property beyond normal wear and tear during their tenancy, and that they incurred actual expenses to repair those damages as evidenced by paid receipts and invoices for repairing and painting the entry hall (\$100.00), caulking the tub surround (\$10.00), replacing a damaged toilet seat (\$12.00), cleaning a greasy exhaust hood (\$15.00), depreciation in value of a damaged kitchen countertop (\$150.00), replacing a refrigerator door support bar (\$18.68), replacing a

broken handle over the exhaust hood (\$12.61), replacing a cracked powder room window pane (\$15.00), replacing recreation room light bulbs (\$1.68), removing furniture left in the basement (\$25.00), and for ant extermination (\$600.00) (this amount was later amended to be \$500.00). Furthermore, the Respondents alleged that the Complainants agreed to pay \$100.00 for having a cat at the Property, which was never paid.

By correspondence dated March 29, 1999, the Complainants requested that the Department re-open Case Nos. 5623 and 7175 which they had previously filed with the Department regarding alleged violations of Chapter 26, "Housing and Building Maintenance Standards," of the Montgomery County Code, 1994, as amended ("County Code"), relating to rental properties. The Complainants requested an award of damages based on the allegations in these Cases to compensate them for alleged reduced value of their leasehold. The main elements of the Complainants' allegations in Case Nos. 5623 and 7175 involved an alleged infestation of bats in the attic of the Property, an alleged leaking roof in the main bedroom, an alleged poor operating water heater tank, and an alleged gas leak relating to the stove.

After determining that Case No. 9017 was not susceptible to conciliation, the Department duly referred this case to the Commission for its review and on June 1, 1999, the Commission accepted jurisdiction of the case and scheduled a public hearing for July 8, 1999.

By correspondence received on June 29, 1999 (See page 156 of Commission's Exhibit No. 1), the Respondents requested that the July 8th public hearing be postponed until they: (1) received copies of all Departmental files and documentation related to the Property; (2) had an opportunity to view the videotape of the final inspection of the Property made by the Complainants and submitted to the Department as part of the original complaint; and (3) received notice explaining " exactly what [they] are to respond to."

By a letter dated July 6, 1999 (See pages 157 and 158 of Commission's Exhibit No. 1), the Commission advised the Respondents that as of that date: (1) the Respondents had in their possession all documentation previously requested, including the original and amended complaint, the entire case file compiled by the Department, all documentation submitted by the Complainants and copies of all applicable statutes and rules relative to the Commission's public hearing process; (2) the Respondents had viewed the subject videotape of the Property inspection; and (3) an explanation of what they were to respond to was contained in the *Summons and Statement of Charges* issued to them on June 28, 1999. Finally, the Respondents were advised that, "Based on the fact that you have in your possession all of the documentation you requested, and you have had an opportunity to view the videotape submitted by the Complainants, which is the basis of your request for a postponement of the public hearing, your request is hereby DENIED."

The record reflects that the Complainants and the Respondents were given proper notice of the hearing date and time. Present at the hearing and presenting testimony and evidence were Margie Walcavich, mother of Complainant Deborah Noyes, on behalf of the Complainants, Respondents Frank and Audrey Martino, and three (3) witnesses called by the Commission, Linda Bird, Program Manager, with the Department's Code Enforcement Division and J. Kwame Edusei, Inspector with the Department's Code Enforcement Division, and Rosie McCray-Moody, Investigator, with the Department's Office of Landlord-Tenant Affairs. The public hearing in this matter commenced on July 8, 1999, and concluded after a second night of public hearing on July 27, 1999.

By a letter dated July 27, 1999, the date of the second night of the public hearing, the Complainants amended their complaint to request, in addition to other relief sought, that the Commission award them treble damages. The Respondents testified at the hearing on July 27, 1999, that they did not believe they were prejudiced by the amendment to the complaint, and therefore, the Commission permitted the amendment.

Without objection from the Complainants or Respondents the Commission entered into the record of the hearing the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Commission also accepted into the record nine (9) exhibits offered by the Complainants' representative, identified as Complainants' Exhibits 1-5, 7, 8 and 10-11 (Exhibit Nos. 6 and 9 were not accepted into the record); and, three (3) exhibits offered by the Respondents, identified as Respondents' Exhibits No. 1-3.

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 May 16, 1996, the Complainants and the Respondents entered into a two (2) year lease agreement (the "Lease") for the rental of the Property, which commenced on June 1, 1996, and expired on May 31, 1998.
2. The Complainants paid to Respondents a security deposit in the total amount of \$3,300. Pursuant to the terms of the Lease, the security deposit was paid in two installments of \$1,650 each, the first on May 16, 1996, and the second on August 1, 1996. The written receipt for the payment of security deposit is contained in the Lease.
3. The Complainants vacated the Property at the expiration of the Lease on or about May 31, 1998, having paid rent in full through that date.
4. At the request of the Complainants, on May 30, 1998, the day before the Lease term expired and the Complainants vacated, the Department's Investigator Rosie McCray-Moody inspected the Property for the purpose of determining if any damage had been caused by the Complainants beyond normal wear and tear. The Commission credits the testimony of Investigator McCray-Moody that she did not observe any damage, other than a burn mark on the countertop in the kitchen, that she considered to be in excess of ordinary wear and tear.
5. The Commission finds, based on a videotape of the Property submitted by the Complainants as part of their original complaint and viewed by the Commission at the hearing on July 8, 1999, that the Property was left in a clean condition by the Complainants with bathtub surrounds caulked. However, the Commission finds that the videotape did not provide sufficient evidence to assess the alleged burned countertop, or the broken refrigerator or range hood parts.
6. By a letter dated July 13, 1998, within thirty (30) days after the termination of the Complainants' tenancy, the Respondents did present to the Complainants, sent by first class mail to the Complainants' last known address, an itemized list of damages together with a statement of costs incurred (\$510.57) and an estimate for extermination of carpenter ants (\$600.00). By the same July 13th letter, the Respondents also issued the Complainants a security deposit refund

check in the amount of \$2,387.43, which represented the balance of their security deposit (\$3,300.00) plus accrued interest (\$198.00), less damages (\$1,110.57).

7. The Commission credits the undisputed testimony of the Respondents that on or about July 15, 1998, they refunded to the Complainants and additional \$100.00 of their security deposit, bringing the total amount of the refund to \$2,487.43, and the total damages claimed to \$1,010.57.

8. The Commission finds that the kitchen countertop was damaged by the Complainants in excess of ordinary wear and tear during their tenancy. However, the Respondents chose not to repair the countertop, thus they never incurred any actual expense for such a repair. Therefore, the charge of \$150.00 assessed against the Complainants' security deposit for countertop repair is disallowed.

9. The Commission is not persuaded by the Respondents' testimony that the Complainants caused an infestation of carpenter ants at the Property during their tenancy, and could not confirm that the cost of the extermination was actually incurred by the Respondents. Therefore, the charge of \$600.00, which was subsequently reduced to \$500.00, assessed against the Complainants' security deposit for extermination of an infestation of carpenter ants is disallowed.

10. The Commission finds that the cost incurred by the Respondents to repair the damaged toilet seat (\$12.60), to clean the exhaust hood, range and other surfaces (\$15.00), to repair of the broken handle on the exhaust hood (\$12.61), and caulk tub and surround (\$10.00) were the result of normal wear and tear and therefore, these charges (\$50.21) are disallowed.

11. The Commission finds that the leak in the entrance hallway ceiling was not the result of the Complainants' failure to properly caulk the bathtub surround (See Findings of Fact No. 5 above) in the bathroom directly above the entrance hallway, but was caused by a leaking pipe in the entrance hallway ceiling. The Commission further finds that the Respondents are responsible for the repair and maintenance of the plumbing system in the Property, including the pipes directly above the entrance hallway. Therefore, the charge of \$150.00 assessed against the Complainants' security deposit for repair of the entrance hallway ceiling is disallowed.

12. The Commission finds that the following damages were caused to the Property by the Complainants during their tenancy in excess of ordinary wear and tear for which the Respondents incurred actual expense to repair: broken powder room window pane (\$15.00), broken refrigerator door support bar (\$18.68); burned out light bulbs (\$1.68); and the cost of moving the furniture from the basement (\$25.00), for a total of \$60.36.

13. The Respondents failed to provide any probative evidence or testimony or any basis whatsoever for the withholding of \$100.00 from the Complainants' security deposit for flea and tick treatment based on the Complainants' having a cat during their tenancy, other than to argue that the Complainants had agreed to pay it and did not. Had the Complainants paid the \$100.00 pet fee, it would have become a portion of their refundable security deposit. In that case, the Respondents would have been within their right to withhold it if damage had been caused by the cat; no such damage has been claimed. Therefore, the charge of \$100.00 assessed against the Complainants' security deposit for having a pet is disallowed.

14. While there was sufficient probative evidence and testimony presented at the hearing to conclude that the roof of the Property leaked during the term of the Lease, the Commission finds that Respondents made repeated unsuccessful attempts to repair and eventually did successfully repair the roof leaks. Therefore, although the Complainants were inconvenienced by the

Respondents' failure to expeditiously repair the roof leak, they did not incur any actual expense, such as temporary relocation or replacement of damaged goods, as a result.

15. The Commission could not conclusively determine from the evidence and testimony presented at the hearing that there was an infestation of bats in the attic of the Property.

16. The Respondents failed to refund to the Complainants the correct amount of security deposit interest, which is 4% per annum accruing at six-month intervals of 2% simple from the day it is given to the landlord. The correct amount of security deposit interest is \$231.00 [first installment of \$1,650.00 x 8% (2 years) = \$132.00] + [second installment of \$1,650.00 x 6% (1½ years) = \$99.00], not \$198.00 as calculated by the Respondents; a difference of \$33.00.

CONCLUSIONS OF LAW

Based upon a fair consideration of the testimony and evidence contained in the record, the Commission on Landlord-Tenant Affairs concludes:

1. The Commission has the authority to consider any evidence it believes it needs to determine the facts in any case before it, including summoning witnesses and documents. In considering the allegations asserted by the Complainants relative to Case No. 9017, the Commission does not see the need to re-open Case Nos. 5623 and 7175 previously filed with the

Department by the Complainants. However, the Commission did consider the testimony of Inspector Edusei and the contents of Commission's Exhibit No. 1, including evidence relating to housing code violations which are a part of Case Nos. 5623 and 7175, in making a determination as to appropriate damages in the matter of Case No. 9017. The Commission concludes, based on a review of all the evidence and testimony presented, that an abatement of a portion of rent paid by the Complainants to the Respondents during their tenancy is not warranted.

2. The Respondents assessed damages against the Complainants' security deposit that were not beyond ordinary wear and tear, were never repaired, were unsubstantiated, or were the Respondents' responsibility to repair, in the amount of \$789.61, in violation of § 8-203(g)(1) and (2) of the State Code.

3. The Respondents failed to credit Complainants with the correct amount of security deposit interest, which sum is \$231.00, a difference of \$33.00, in violation of Paragraph 3, "Security Deposit," of the Lease and § 8-203(f)(1) of the State Code.

4. The Respondent's failure to handle and dispose of the Complainants' security deposit in accordance with § 8-203 of the State Code and Paragraph 3 of the Lease has caused a defective tenancy.

5. The Respondents failed to issue to Complainants an itemized list of damages together with a statement of cost actually incurred to repair that damage within thirty (30) days after the termination of the tenancy, in violation of Paragraph 3, "Security Deposit," of the Lease and § 8-203(h)(1) of the State Code.

6. Although a total of \$789.61 in damages assessed against the Complainants' security deposit have been disallowed, the Commission finds that the Respondents without a reasonable or good faith basis withheld from the Complainants' security deposit \$100.00 for the cat deposit and \$500.00 for the alleged carpenter ant infestation, in violation of § 8-203(f)(4) of the State Code.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby Orders the Respondent to pay the Complainant **\$1,233.21** which sum represents the total amount withheld from the Complainants' security deposit (\$1,010.57), plus \$33.00 unpaid interest, less \$60.36 which the Commission determined the Respondents were entitled to withhold, plus a penalty of \$250.00 pursuant to § 8-203(f)(4) of the State Code, which the Commission determines is warranted based upon the facts in this case.

The foregoing decision was concurred in unanimously by Commissioner Gary Everngam, Commissioner Martin Schnider and Commissioner Greg Smith, Chairperson.

To comply with this Order, Respondents Frank and Audrey Martino must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, Maryland, within fifteen (15) calendar days of receipt of this Decision and Order, a check payable to Jeff and Deborah Noyes in the full amount of \$1,233.21.

The Respondents are hereby notified that Section 29-44 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 the Respondents comply with this Order.

In addition to the issuance of a \$500.00 civil fine Class A violation, should the Commission determine that the Respondents have not, within fifteen (15) calendar days of the receipt 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 County Attorney for additional legal enforcement.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within (30) days from the date of this Order, pursuant to the Maryland Rules governing administrative appeals.

Martin Schnider, Jr., Commissioner
Commission on Landlord-Tenant Affairs