

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

<p><b>In the Matter of</b></p> <p>Michael and Susan White</p> <p><b>Complainants</b></p>	
<p>v.</p>	<b>Case No. 10588</b>
<p>Frank and Audrey Martino</p> <p>Rental Facility: 902 Snure Road, Silver Spring, MD 20901 (Rental License No. 008492)</p> <p><b>Respondent</b></p>	

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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 ("County Code"), and the Commission having considered the testimony and evidence of record, it is, therefore, this 19<sup>th</sup> day of March, 2001, found, determined and ordered, as follows:

**BACKGROUND**

On September 1, 2000, Michael and Susan White (the "Complainants"), current tenants at 902 Snure Road, Silver Spring, MD, (the "Property"), a licensed single

family rental facility 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 Frank and Audrey Martino (the "Respondents"), owners of the Property, are charging them a monthly trash collection fee of \$20.00 in violation of Section 29-30(a)(5) of Chapter 29, "Landlord-Tenant Relations," of the Montgomery County Code, 1994, as amended ("County Code").

Specifically, the Complainants assert that the Respondents require them to pay a \$20.00 monthly trash collection fee even though the Property is located in a Montgomery County trash collection district, and the trash collection service is not performed by a private trash hauler.

The Respondents contend that Section 29-30(a)(5) of the County Code does not prohibit them from charging the Complainants for trash collection, even though the Property is located in a County trash collection district. The Respondents contend that the County Code when read in its totality permits the transfer of trash collection fees from Landlord to Tenant and that the Complainants agreed to such a fee in paragraph 11 of the lease.

The Complainants are seeking an Order from the Commission for the Respondents to reimburse them \$120.00 (\$20 a month for 6 months) that they have already paid, and for the Respondents to amend the lease and remove the provision requiring them to pay the fee, and release them from any future obligation to pay such a fee.

After determining that the complaint was not susceptible to conciliation, the Department duly referred this case to the Commission for its review, and on December 5, 2000, the Commission accepted jurisdiction of the case and scheduled a public hearing which commenced on January 18, 2001 and ended on that date.

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 the Complainants Michael and Susan White and the Respondents, Frank and Audrey Martino.

Without objection from the Complainants or the Respondents, the Commission entered into the record of the hearing the case file compiled by the Department, identified as Commission Exhibit No. 1. The Commission also accepted into evidence without objection a statement from the Respondents, identified as Respondents' Exhibit 1.

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 Chapter 29 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 April 6, 2000, the Complainants signed a one-year lease agreement with the Respondents for the rental of the Property (the "Lease"), which commenced on May 1, 2000, and is due to expire on April 30, 2001.
2. A handwritten addendum to Paragraph 11 of the Lease, entitled "Utilities," which was initialed by both the Complainants and the Respondents, states, "Cty. Collection District charge is \$20 monthly at this time (charge reflects charge to owner) \$20 Payment is due monthly with the monthly rent payment."
3. On July 16, 2000, the Complainants informed the Respondents that they did not believe that the trash collection charge was allowed by the County Code.
4. On July 25, 2000, the Complainants contacted the Department and were informed that the trash collection charge being assessed by the Respondents was prohibited by Section 29-30(a)(5) of the County Code.
5. On August 5, 2000, the Complainants sent the Respondents a certified letter requesting that the trash collection fees paid until that date be reimbursed.
6. On August 10, 2000, in response to the Complainants' request for reimbursement, the Respondents sent them a letter requesting that they continue to pay the fee until the issue could be resolved. The Respondents also advised the Complainants that they would reimburse the previously paid trash collection fees if their interpretation of the County Code was not correct.
7. A conciliation conference was scheduled by the Department for October 12, 2000, however, the Respondents failed to attend. The Respondents stated in a letter to the Department that such a meeting was premature until such time as the legal issue raised in the complaint had been resolved.
8. The trash removal service to the Property is not performed by a private hauler.
9. The Property is located in a Montgomery County trash collection district.

## CONCLUSIONS OF LAW

1. Section 29-30(a)(5) of the County Code, entitled "Obligations of landlords," states:

(a) The landlord must reasonably provide for the maintenance of the health, safety and welfare of all tenants and of all individuals properly on the premises of a rental facility. This obligation includes:

(5) Providing and maintaining appropriate receptacles and conveniences for the removal of ashes, rubbish and garbage, and arranging for the frequent removal of such waste. However, the landlord of a single-family rental facility must arrange for the frequent removal of waste but need not provide or maintain appropriate receptacles. A lease for a single-family rental facility may require a tenant to pay for trash collection service if that service is provided directly by a private trash hauler and the facility is not located in a County collection district.

2. The Respondents are in violation of Section 29-30(a)(5) of the County Code, and a defective tenancy exists. Contrary to the Respondents' assertions, Section 29-30(a)(5) is not silent on the issue of whether or not landlords may charge tenants a trash collection fee, but specifically identifies those situations in which a landlord may charge such a fee. Section 29-30 of the County Code establishes the obligations of landlords, and Section 29-30 (a)(5) provides that those obligations include providing and maintaining appropriate receptacles and conveniences for the removal of ashes, rubbish and garbage, and arranging for the frequent removal of such waste. That is the general rubric. A limited exception is made in that the landlord of a single-family rental facility must only arrange for the frequent removal of waste but need not provide or maintain appropriate receptacles. The Section goes on to explain those circumstances when a landlord may require a tenant to pay for trash collection "if that service is provided directly by a private trash hauler and the facility is not located in a County collection district". Those circumstances do not exist in this case. Therefore, the Respondents may not require in the lease for this single-family rental facility, which is located in a County trash collection district, with no private hauler service, that the Complainants pay a fee for trash collection.

3. The addendum to Paragraph 11 of the Lease, which requires the Complainants to pay a \$20.00 monthly trash collection fee, also violates Section 29-26(h) which requires that "Each lease for a rental facility located in the County must: (h) Contain no waiver of any protections afforded under this chapter." Therefore, this Lease addendum is unenforceable.

4. No other Sections of the County Code contradict the allocation of responsibility for payment of trash removal specified in Section 29-30(a)(5).

### **ORDER**

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders the Respondents to:

1. Reimburse to the Complainants \$220.00, which sum represents the \$20.00 per month trash collection fee paid by the Complainants from the commencement of their tenancy, May 1, 2000, up to and including the date of this Order, or such sum which equals reimbursement of all trash collection fee payments made by the Complainants from the commencement of their tenancy, May 1, 2000, until the date of this Order, whichever amount is greater;
2. Immediately cease and desist imposing, collecting or assessing a trash collection fee against the Complainants and any other tenant(s) at any single-family rental facility the Respondents own, operate or manage in Montgomery County, Maryland, that is in a County trash collection district and where the trash collection service is not provided by a private trash hauler;
3. Notify in writing the Complainants and all other tenant(s) of any single-family rental facility the Respondents own, operate or manage in Montgomery County, Maryland, that is in a County trash collection district and where the trash collection service is not provided by a private trash hauler, that any provision in their lease requiring them to pay trash collection fees is unenforceable, and send copies of all such notices to the Department; and,
4. Remove from any lease agreement or lease addendum for use in Montgomery County, Maryland, entered into after the date of this Order, any and all language obligating a tenant to pay for trash collection services if the rented property is located within a County trash collection district and the trash collection service is not provided by a private trash hauler.

The foregoing decision was concurred in unanimously by Panel Chairperson Donna Henry Wright, and Commissioners Gary Everngam and John Peterson.

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: (1) a check payable to Michael and Susan White in the full amount of \$220.00 or a sum equal to the reimbursement of all trash collection fee payments made by the

Complainants to the Respondents from the commencement of the Complainants' tenancy until the date of this Order, whichever is greater; and (2) copies of all notices described at No. 3 in the "Order" section above.

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 you 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.

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Donna Henry-Wright, Panel Chair

Commission on Landlord-Tenant Affairs