

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

In the matter of:

Alecia Griffin
Complainant

v.

Tiruayer Negatu
Respondent

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Case No. 41294

Rental Facility: 11467 Appledowre Way, Germantown, MD (License No. 59652)

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, as amended ("County Code"), and the Commission having considered the testimony and evidence of record, it is therefore, this 10th day of June, 2022, found, determined, and ordered as follows:

BACKGROUND

On March 26, 2021, Alecia Griffin ("Complainant"), current tenant at 11467 Appledowre Way, Germantown, MD ("Property"), filed a complaint with the Office of Landlord-Tenant Affairs ("OLTA"), within the Department of Housing and Community Affairs ("Department"), in which it is alleged that Tiruayer Negatu ("Respondent"), owner of the Property, refused to refund an overpayment of rent in the amount of \$2,898.00. On May 3, 2021, the Complainant amended the complaint to allege that the Respondent issued her a notice to vacate in retaliation for requesting a refund and for filing a complaint with OLTA.

After determining that Case No. 41294 was not susceptible to conciliation, the Department referred this case to the Commission. On June 1, 2021, the Commission voted to conduct a public hearing. The public hearing in the matter of Alecia Griffin v. Tiruayer Negatu, relative to Case No. 41294, was held on August 12, 2021.

The record reflects that the Complainant and the Respondent were given proper notice of the hearing date and time. Present and sworn at the hearing and presenting evidence was Complainant Alecia Griffin, and Respondent Tiruayer Negatu. Complainant Alecia Griffin was represented by attorney Natalie F. Branch, Maryland Legal Aid Staff Attorney. Also present was Maureen Harzinski, Investigator, Office of Landlord-Tenant Affairs.

Without objection, the Commission entered into evidence Commission's Exhibit No. 1, which is the case file compiled by the Department. The Commission also entered into evidence documents which had been submitted by the Respondent prior to the hearing and were marked as Respondent's Exhibit No. 1.

At the conclusion of the hearing on August 12, 2021, the Commission kept the record open for eleven (11) calendar days through August 23, 2021, to allow the Respondent to submit additional evidence. On August 23, 2021, the Respondent submitted by email to the Department additional documentation which was marked as Respondent's Exhibit No. 2 which was forwarded to the Complainant and the Commission panel. The record was closed on August 23, 2021.

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. The Commission finds that on January 4, 2020, the Complainant and the Respondent signed a one-year lease agreement ("Lease") for the rental of the Property, which commenced on January 4, 2020, and expired on January 31, 2021, at a monthly rate of \$1,962.00. Thereafter, the Complainant became a month-to-month tenant.
2. Page 5 of the Lease states that "Tenant agrees to pay a Security Deposit of \$1,962.00 to secure Tenant's pledge of full compliance with the terms of this agreement."
3. The Commission finds that the Complainant paid a \$1,962.00 security deposit at the commencement of the tenancy which was acknowledged in the Lease.
4. The Commission finds that on or about January 13, 2020, the Complainant provided to the Respondent two checks from the Montgomery County Department of Health and Human Services ("DHHS") made payable to Respondent as follows: Check No. 02021460 in the amount of \$1,500.00 and Check No. 107381 in the amount of \$2,408.00, for a total payment of \$3,908.00 from DHHS to Respondent on behalf of the Complainant.
5. The Commission finds that on or about January 1, 2020, the Complainant paid to the Respondent the sum of \$10.00 and received a receipt from the Respondent acknowledging the payment.
6. The Commission finds that the total payment of \$3,918.00 (\$1,500.00 + \$2,408.00 + \$10.00) was applied towards the Complainant's \$1,962.00 security deposit and the balance of \$1,956.00 was applied towards Complainant's rent.¹

¹ The Commission notes that on January 3, 2020, the Complainant and the Respondent signed a lease which indicates that the monthly rent was \$1,959.00 and the security deposit was \$1,959.00 for a total amount due at the commencement of the lease to be \$3,918.00. Thereafter, the parties signed the Lease on January 4, 2020, under which

7. The Commission accepts as credible the Complainant's testimony that she was in the process of porting² her Housing Opportunities Commission (HOC) Choice Voucher from West Virginia to Montgomery County, Maryland at the commencement of the tenancy at the Property.

8. The Commission finds that on January 15, 2020, HOC sent an email to the Respondent and Complainant which stated, in pertinent part:

"Dear Landlord,
For the unit located at 11467 Appledowre Way, Germantown, MD 20876;
HOC has determined the contract rent amount of \$1,962.00 has been
determined affordable and reasonable for Alecia Griffin.

The tenant is approved as of January 4, 2020.
The Housing Assistant payment is \$1,962.00.
The tenant rent portion to pay is \$0.

HOC will mail a Housing Assistant Payment (HAP) contract for signature within 30 to 60 days from the date the client moved into the unit. You are to sign the HAP contract and mail the contract back with a copy of the lease. HOC will not remit payment until we receive a signed copy of the executed HAP contract and tenant lease."

9. The Commission finds that pursuant to Paragraph 5.d of Part C of HAP Contract: Tenancy Addendum, signed by the Respondent and HOC on February 12, 2020, the Complainant is not responsible for paying HOC's portion of rent to the Respondent and that HOC's failure to pay the HAP payment to the landlord is not a violation of the lease.

10. The Commission finds that by correspondence dated February 12, 2020³, HOC advised the Complainant and the Respondent that effective January 4, 2020, HOC was responsible for \$1,774.00 and the Complainant was responsible for \$188.00 of the total monthly rent payment of \$1,962.00.

11. The Commission finds that in addition to the \$1,956.00 payment made by DHHS on behalf of the Complainant for rent, and the \$10.00 payment made by Complainant on January 1, 2020, the Complainant paid the Respondent \$289.00 in August 2020, \$289.00 in September 2020, and \$289.00 in October 2020. Accordingly, the Complainant's total payments towards her rental portion was \$2,844.00.

the monthly rent and security deposit were each to be \$1,962.00. Notably, the Lease does not pro-rate the monthly rent amount for January 2020, even though the tenancy did not begin on the first of the month.

² "Portability" in the HOC Choice Voucher Program refers to the process through which a household can transfer or "port" their rental subsidy when they move to a location outside the jurisdiction of the public housing agency (PHA) that first gave them the voucher when they were selected for the program.

³ Letter dated February 4, 2020, indicated rent was \$1,959.00 and Complainant's portion was \$185.00.

12. The Commission finds that by correspondence dated October 5, 2020, HOC advised the Complainant and the Respondent that retroactively to January 4, 2020, HOC was responsible for the entire amount of the monthly rent of \$1,962.00.

13. The Commission finds that beginning in January 2020, HOC made the following payments on behalf of the Complainant as follows:

January 2020	\$1,602.00*
February 2020	\$1,774.00
March 2020	\$1,774.00
April 2020	\$1,605.00
May 2020	\$1,605.00
June 2020	\$1,605.00
July 2020	\$1,538.00
August 2020	\$1,673.00
September 2020	\$1,673.00
October 2020	<u>\$1,673.00</u>
TOTAL:	\$16,522.00

*January 2020's monthly rent paid by HOC on behalf of Complainant has been pro-rated because the Complainant moved into the Property on January 4, 2020, and HOC does not pay rent prior to occupancy.

14. The Commission finds that in October 2020, HOC made a payment to the Respondent in the amount of \$2,908.00 to retroactively cover the portion of the rent it had not paid for each month up to that date.

15. The Commission finds as of October 31, 2020, HOC had paid the Respondent \$19,430.00, which sum represents the pro-rata rent in the amount of \$1,602.00 for the month of January and \$1,962.00 for the months of February 2020 through October 2020 (\$1,962.00 monthly rent x 9 months).

16. The Commission finds that in October 2020, as a result of the retroactive payment of \$2,908.00 by HOC in October 2020, the Respondent was overpaid for rent in the amount of \$2,823.00, calculated as follows:

<u>Month/Year</u>	<u>Total Rent Owed</u>	<u>Total Amount Paid by HOC</u>	<u>Total Amount Paid by Complainant/DHHS</u>
January 2020	\$1,772.00	\$1,772.00	\$10.00/\$1,946.00
February 2020	\$1,962.00	\$1,962.00	
March 2020	\$1,962.00	\$1,962.00	
April 2020	\$1,962.00	\$1,962.00	
May 2020	\$1,962.00	\$1,962.00	
June 2020	\$1,962.00	\$1,962.00	
July 2020	\$1,962.00	\$1,962.00	
August 2020	\$1,962.00	\$1,962.00	\$289.00
September 2020	\$1,962.00	\$1,962.00	\$289.00

October 2020	<u>\$1,962.00</u>	<u>\$1,962.00</u>	<u>\$289.00</u>
TOTAL:	\$19,430.00	\$19,430.00	\$2,823.00

17. On or about October 27, 2020, the Respondent acknowledged by text to the Complainant that because of HOC's payment of \$2,908.00, the Complainant had a credit on her account.

18. By text dated November 9, 2020, Respondent advised that she would refund to the Complainant the three (3) payments of \$289.00 in August, September and October 2020 and the \$11.00⁴ payment she made in January 2020. The Respondent testified that she mailed to the Complainant a check in the amount of \$878.00 which was never cashed by the Complainant.

19. From November 2020 through March 15, 2021, Complainant continued to request the return of the overpayments. As a result of the Respondent's refusal to return the overpayment, the Complainant served on the Respondent the Landlord-Tenant complaint form that she thereafter filed with the Department.

20. The Commission finds that on March 19, 2021, the Respondent gave the Complainant a 60-day notice to vacate in retaliation for filing a complaint.

21. The Commission finds that by correspondence dated April 1, 2021, HOC advised the Complainant and the Respondent that effective May 1, 2021, Complainant's portion of the monthly rent would increase from \$0 to \$245.00, and HOC would be responsible for \$1,717.00.

 CONCLUSIONS OF LAW

Accordingly, based upon a full and fair consideration of the evidence, the Commission on Landlord-Tenant Affairs concludes the following:

1. The Commission concludes it is not permissible under Section 8-203 (b)(1) and (2) of the Real Property Article to apply excess payments towards the security deposit.
2. The Commission concludes that the Respondent's failure to credit or return the entire amount of the overpayment created a defective tenancy.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondent must credit the Complainant's account with **\$2,823.00**, which sum represents the overpayment that the Respondent received from the Complainant and DHHS.

Commissioner Damien Mills, and Commissioner Grayce Wiggins, and Panel Chairperson Julie Powers concurred in the foregoing decision.

⁴ Complainant had a receipt indicating that she paid \$10.00 at the commencement of the tenancy, however, the Respondent returned \$11.00 to the Complainant.

To comply with this Order, Respondent Tiruayer Negatu must forward to the Office of Landlord-Tenant Affairs, Attention: Rosie McCray-Moody, Manager, 1401 Rockville Pike, 4th Floor, Rockville, MD 20852, within thirty (30) calendar days from the date of this Decision and Order, verification that this credit has been given to the Complainant, Alecia Griffin, in the amount of **\$2,823.00**.

The Respondent 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 as a Class A violation under the County Code as set forth in Section 1-19 of the County Code. This civil fine may, at the discretion of the Commission, be imposed daily until there is compliance with this Decision and Order.

In addition to the issuance of a \$500.00 civil fine, should the Commission determine that the Respondent has not, within thirty (30) calendar days from 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 pursuant to Section 29-48(c) of the County Code.

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 under the Maryland Rules governing administrative appeals. In accordance with Section 29-49 of the County Code, should the Respondent choose to appeal the Commission's Order, they must post a bond with the Circuit Court in the amount of the award (**\$2,823.00**) if she seeks a stay of enforcement of this Order.



Julie Powers, Panel Chairperson
Commission on Landlord-Tenant Affairs