

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

In the Matter of Joan Butts Complainant	
v.	Case No. 3797
 Tani and Mark Corey Rental Facility: 10410 Apple Ridge Road, Gaithersburg, MD 20879 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, pursuant to Sections 29-14A, 29-38, and 29-40 of the Montgomery County Code 1994, as amended ("Code"), and the Commission having considered the testimony and evidence of record, it is, therefore, this day of 1999, found, determined and ordered, as follows:

BACKGROUND

On May 15, 1997, Joan D. Butts ("the Complainant"), filed a formal complaint with the Division of Housing and Code Enforcement. (See attached). The Complainant alleges that Tani and Mark Corey ("the Respondents"), owners of 10410 Apple Ridge Road, Gaithersburg, MD 20879 (the "Property"), an unlicensed single-family rental facility in Montgomery County, MD and the Respondents' agent, Allen W. Rothenberg, Mimi Selig Management, Inc. ("Agent"): (1) failed to deliver the Property to her at the commencement, April 1, 1997, in a clean, safe and sanitary condition in violation of Sections 29-26(d) and 29-26(n) of the Montgomery County Code, "Landlord-Tenant Relations, 1994, as amended ("County Code"); and (2) although the respondents refunded her security deposit, they failed to refund her all but one (1) day of the pre-paid first month's rent, after she notified the Respondents in writing of her intention not to take possession of the property.

The Complainant is seeking an Order from the Commission for the Respondents to refund the balance of her April, 1998 rental payment in the amount of \$918.33.

This matter was heard by the Commission on June 9, 1998. 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 Code. The Complainant, Joan Butts and the Respondent, Tani and Mark Corey, which were represented by Allen Rothenberg, was present. The Complainant called three witnesses, Mr. Butts, her son, and Karen Poole and Doug Poole, family members. The Respondents' representative called a witness, Michael Pratt, agent for Mimi Selig Management. Each of these witnesses testified under oath.

The key issues in this case are:

1. Whether the Respondents failed to obtain a Rental Facility License prior to offering the Property for rent to the Complainant, in violation of Section 26(n) of the County Code, and Paragraph 5 of the Lease;
2. Whether the Respondents and/or Agent failed to deliver the Property to the Complainant at the commencement of her tenancy in a clean safe and sanitary condition, and in compliance with all applicable laws, in violation of Section 26 (n) of the County Code, and Paragraph 5 of the Lease;
3. Whether the Respondents or their Agent had sufficient time or made any attempt to repair, refurbish, re-decorate or in any way prepare the property for the Complainant's tenancy; based on the Agent's statement that the previous tenants, Mr. and Mrs. Rock Young, vacated on March 31, 1997, the day before the complainant's tenancy was to begin, and the Youngs' move-out inspection report which stated that the Property needed "to be cleaned and exterminated," basement door walls and ceiling needed painting, bathroom tub needed to be caulked, the carpet was stained, and the need to "touch up water damage."
4. Whether the Respondents and/or their Agent breached the Complainant's lease agreement and the express warranty of habitability and covenant to repair in violation of Section 26(d) of the County Code, and Paragraph 5 of the Lease.

The Respondents currently reside in Puerto Rico where Mrs. Corey is on active military service in the United States Navy. On May 12, 1998, the Respondents filed an application for a Rental Facility License and designated Michael Pratt, Mimi Selig Management, Inc., as their legal agent.

The Complainant called witness, Doug Poole, to testify. Mr. Poole testified he had gone to Mimi Selig Management Company on three occasions to pick up two refund checks for the Complainant which represented her security deposit and the first month's rent for the property. He testified he was told by the management company that the checks were not ready and he would have to come back.

Mr. Poole and Mrs. Karen Poole further testified that they were present when Mr. Michael Pratt, Respondent's agent, conducted a walk thru inspection of the dwelling unit on March 27, 1997. Mr. Poole stated that there was a crack in the middle of the living room ceiling, and a water leak in the upstairs bedroom; the kitchen was dirty and there were some loose tiles in the kitchen; the bathrooms were dirty, had mildew in the shower area, and the bathtub area needed caulking. Mr. Pratt acknowledged the existence of several minor deficiencies described by the Complainant's witnesses.

Mr. Rothenberg, Respondent's representative, testified that because the Property was put up for sale and rent there was an oversight in obtaining a rental facility license. However, the property was licensed on May 2, 1997, and the citation was dismissed.

Mr. Rothenberg, submitted the following documents: A memo dated June 9, 1998, from Sheila Himmon, which described the condition of the Property when the new tenant move in, a brief description of his company and the events that transpired concerning the Complainant's tenancy. It was entered into the record as Respondents Exhibit No. 1.

Mr. Rothenberg referred to the following documents which were apart of Commission Exhibit No. 1: an invoice to indicate the carpets in the dwelling unit had been professionally cleaned and defleaed and deticked (Page 36); some painting had been performed on April 1, 1997, and the amount paid for the painting was \$373.00 (Page 35) Mr. Rothenberg stated the painting was performed on April 1, 1997 and was paid for on April 5, 1997. (Page 37) Mr. Rothenberg referred to a letter dated to Ms. Butts dated April 3, 1997 which stated she should be responsible for rent until the property was rerented. (Page 53, Commission's Exhibit No.1).

Mr. Rothenberg testified there was no trash in the backyard. A storm door was removed by Mr. Pratt the following day. The painter had patched and painted over some marks in the upstairs bedroom ceiling, but there was no dampness on the ceiling.

Mr. Rothenberg further testified that the complainant had refused to submit as list of deficiencies they found wrong, within the first fifteen (15) days of occupancy, as required by the Complainant's lease agreement.

He stated that a new tenant made application for the dwelling unit on April 2, 1997, and the property was rerented on may 1, 1997. (Commission's Exhibit No. 1, page 53).

Here the determination of this issue is dependent on the interpretation and application of specific statutory and regulatory provisions, and the specific facts of this case. Section 26-8 (d) of the Code provides that "No owner or operator shall occupy or initially let to any other occupant any vacant dwelling or rooming unit unless it is Aclean, sanitary, and fit for human occupancy." Section 29-26 (n) of the Code provides that each lease for a rental facility located in Montgomery County must "contain a covenant that the landlord will deliver the leased premises and all common areas in a clean, safe, and sanitary condition, free of rodents and vermin, and in complete compliance with all applicable laws." The subject lease has such a provision (See page 5 of Commission's Exhibit No. 1). See, also, Code Section 29-30 (a)(1), which requires landlords to comply with "all applicable provisions of any federal, state or county statute, code, regulation or ordinance governing the maintenance of the dwelling unit and rental facility."

Upon consideration of the testimony and documentary evidence submitted herein, the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Prior to the execution of the lease, complainant Joan Butts had the premises inspected by her representatives, Doug Poole and Karen Poole, with the Respondent's agent, Michael Pratt, at which time they did observe defects or deficiencies.
2. After Ms. Butts' representative reviewed the Property, on March 25, 1997, the Complainant and the Respondent entered into a lease for the single family house at 10410 Apple Ridge Road, Gaithersburg, Maryland.
3. The lease commencement dated was April 1, 1997, and the expiration date was March 31, 1998. It was anticipated that the Complainant would take occupancy on April 1, 1997.
4. The Complainant paid the Respondents a security deposit of \$950.00 and the first month's rent in the amount of \$950.00
5. On March 27, 1997, at the time she was to take possession, both the Complainant's representatives inspected the premises withe the Respondent's agent, Michael Pratt, at which time they observed and documented certain deficiencies. Mr. Pratt acknowledged the existence of the deficiencies and agreed to contact the Respondents to have then corrected.

6. On April 1, 1997, the Property was in compliance with all applicable laws, codes, and regulations. The deficiencies noted by the complainant, did not individually or collectively constitute a violation of Section 26-8 or Section 29-26(n) of the County Code, or a substantial breach of the lease agreement by the Respondents.

7. The Respondent's agent corrected all of the referenced minor deficiencies in the Property within 48 to 72 hours, by April 1, 1997.

8. The Complainant never took possession of the Property, and issued written notice to the Respondents' agent on April 1, 1998, terminating the lease.

9. After receiving the referenced April 1st notice from the Complainant, the Respondent's agent expeditiously attempted to re-let the Property; accepted a new rental application on April 2, 1998, and on April 9, 1997, prepared and executed a new lease for the re-rental of the Property with a commencement date of May 1, 1997.

CONCLUSIONS OF LAW

1. Chapter 26, "Housing and Building Maintenance Standards," of the County Code provides basic, minimum standards for human habitation, and Section 29-26(n), " Landlord-Tenant Relation," of the County Code requires only that the rental facility be delivered "in a clean, safe and sanitary condition, free of rodents and vermin, and in complete compliance with all applicable laws." In determining if the conditions of a Property warrant refusal to take possession and termination of the lease, certain factors need to be considered. Factors to be considered include whether the deficiencies which may be minor in nature, rise to the level of housing code violations, the nature, the number, and the severity of code violations, how long any code violations have existed, whether the landlord has notice of the violations and has been given a reasonable opportunity to cure them.
2. As a matter of law, even taking into account the deficiencies noted above, the Complainants failed to provide sufficient probative testimony or evidence to demonstrate that the Property was delivered to them in an unclean, unsafe or unsanitary condition, or that the Property was uninhabitable at the commencement of the lease term, April 1, 1997, or that any of the deficiencies described and documented rise to the level of housing code violations or in any way constitute a violation of Chapter 26 or Chapter 29 the County Code.
3. Because of the foregoing, the Complainants were not within their rights to terminate, the lease and by doing so, breached the lease.
4. The Respondents fulfilled their duty to mitigate damages based on the Complainants' breach of the lease by expeditiously advertising and re-renting the Property as of May, 1997.
5. The Respondents did not breach, the lease agreement with the Complainants and therefore, did not cause a defective tenancy.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby finds that no violation of applicable law or lease has occurred on the part of the Respondents or their agents, and that the Respondents have not caused a defective tenancy. It is, therefore, Ordered that case No. 3797 Butts vs. Corey is DISMISSED.

The foregoing decision was concurred in unanimously by Commissioners Greg Smith Commission Martin Schnider and Commissioner Jonathan Smith, Panel Chairperson.

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

Jonathan Smith, Panel Chairperson

Commission on Landlord-Tenant Affairs