

Before the

Commission on Landlord-Tenant Affairs

for Montgomery County, Maryland

In the Matter of George and Regina Haritos Complainants	
v.	Case No. 4267
Brian and Joanne Fitzell 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 1997, as amended ("County Code"), and the Commission having considered the testimony and evidence of record, it is, therefore, this 12th day of August, 1998, found, determined and ordered, as follows:

INTRODUCTION

On June 25, 1997, George and Regina Haritos (the "Complainants"), former leaseholders at 6226 Lone Oak Drive, Bethesda, MD (the "Property"), a licensed single family rental facility in Montgomery County, MD, filed a formal complaint

with the Office of Landlord-Tenant Affairs, Department of Housing and Community Affairs (the Department or DHCA). The Complainants allege that Brian and Joanne Fitzell, owners of the Property (the "Respondents"): 1) Failed to deliver the Property to them in a clean, safe and sanitary condition at the time they were scheduled to take possession (May 25, 1997); 2) failed to make needed and necessary repairs to the Property prior to their scheduled move-in date; 3) failed to provide them with the lead paint disclosure required by State law; and 4) failed to refund their security deposit and the first month's rent after they notified the Respondents in writing of their intention not to take possession of the Property.

The Respondents contend that: 1) the repairs requested by the Complainants and required by the Department were completed within three (3) days after they received notice from DHCA Inspector Williams; 2) the majority of the required repairs were minor in nature; 3) they complied with all applicable laws to mitigate damages and re-advertised Property immediately upon receipt of the Complainant's notice not to take possession of the Property; 4) the Property was re-rented in July 1997 at a lower rent; and 5) based on Complainants' failure to take possession, they are entitled to retain their security deposit and first month's rent to cover lost rent and costs incurred to re-rent the property.

The Complainants are seeking a refund of their entire security deposit (\$1,375.00), the first month's rent (\$1,375.00), the prorated May 1997 rent (\$133.00) and hotel costs they paid while seeking alternative housing (\$240.00) for a total award of \$3,123.00.

This matter was heard by the Commission on February 10, 1998. Both the Complainants, George and Regina Haritos, and Respondents, Brian and Joanne Fitzell, were present. The Complainants called one (1) witness, Mr. Hertzman, and the Respondents called eight (8) witnesses: Daniel McMahan, an exterminator working for Terminex Company; John Walker, Respondent Joanne Fitzell's father; Kathleen Walker, Respondent Joanne Fitzell's sister; Carol Koqok, a realtor; James and Iris Williams, neighbors; and Billy Williams, a bricklayer. Each of these eight witnesses testified under oath.

The Commission extended the time period to decide this matter pursuant to Section 7.1 of Appendix L, "Regulations on Commission on Landlord-Tenant Affairs" of Chapter 29 of the Montgomery County Code, 1997, as amended.

The key issues in this case are 1) whether the premises subject to the lease were clean, safe and sanitary at the commencement of the lease; 2) whether the Complainants are entitled to a return of the security deposit and prepaid rent; 3) whether the Complainants are entitled to be reimbursed for costs they incurred to stay in a hotel until they were able to secure alternative housing.

There are certain material facts as to which there appear to be no dispute. The Respondents are the owners of the Property and, on April 9, 1997, the Complainants executed a lease with the Respondents to commence on May 20, 1997, which was set to expire on June 30, 1998. The lease was signed by George Haritos, on behalf of himself and his wife, Regina, and by Ann Lee Walker, Joanne Fitzell's mother, acting as an agent for the Respondents. It was expected that the Complainants would move in on or about May 20, 1997.

The Commission entered into evidence, as Commission's Exhibit No. 1, the contents of the case file compiled by the Division of Housing and Code Enforcement, within the Department. There was no objection by the Complainants or by the Respondents.

Complainant, George Haritos, was being transferred from San Antonio, Texas, to the Washington, D.C. metropolitan area. He came to the Washington, D.C. metropolitan area in April in order to find housing for himself and his family. He first viewed the Property in early April 1997 at which time the Property was occupied by the Respondents. The Property appeared to be in good condition. Mr. Haritos returned to Texas to discuss the Property with his wife.

Mr. Haritos also testified that, based upon a site inspection, he and his wife, Regina Haritos, signed a lease with the Respondents. On May 25, 1997, the Haritos arrived to take possession of the Property. They testified that the Property was unclean and unsanitary and that there were certain deficiencies present which were depicted in Complainant's Exhibit 5, a videotape recorded on or about the time of the scheduled move-in. The Complainants refused to move in because of the condition of the premises. The Complainants contacted the Division of Housing Code Enforcement and an inspection was conducted (Commission Exhibit 1, pages 12-17). The inspection revealed numerous and substantial violations of the Montgomery County Housing Code Chapter 26 Montgomery County Code, 1997, as amended (the Code or the County Code). (See Commission Exhibit 1; Complainants' Exhibit 5).

The Respondents did not entirely dispute the Complainants' contention regarding the conditions on May 25, 1997. Testimony was given at the hearing that there was a trash can at the curb awaiting pickup, the grass needed cutting and there were boxes and bags on the porch awaiting pickup by a local charitable organization.

In addition to the foregoing, the Commission reviewed the lease which was executed by the parties (Commission Exhibit 1, page 3). The lease contained no security deposit disclosures required by Section 8-203 of the Real Property Article, Annotated Code of Maryland, 1996 (the State Code) and there was no other evidence that the security deposit disclosures were given. Additionally, the lease, in certain other

respects, failed to comply with the provisions of the County Code pertaining to the contents of the lease.

The Complainants had arranged to stay in a hotel the first night they arrived in the Washington, D.C. metropolitan area. They, as planned, stayed in a hotel on the evening of May 25, 1997. However, the Complainants were required to incur an additional \$240.00 in hotel bills by reason of their inability to move into the premises on May 26 as planned.

FINDINGS OF FACT

1. On April 9, 1997, George Haritos, on behalf of himself and his wife, Regina Haritos, executed a thirteen-month lease agreement with the Respondents for rental of the Property which is the subject of the Complaint (Commission Exhibit 1, p. 3);
2. The lease agreement was executed by Ann Lee Walker, an agent for the Respondents (Commission Exhibit 1, p. 9);
3. The lease was to commence on May 20, 1997 and terminate on June 30, 1998;
4. On April 9, 1997, the Respondents paid a security deposit in the amount of \$1,375.00, one-month's rent in the amount of \$1,375.00 and pro-rated rent for May 1997 of \$133.00 for a total of \$2,883.00;
5. The lease provided that the Complainants were to take possession of the Property on May 20, 1997. The Complainants planned to move into the Property on May 21, 1997;
6. On May 25, 1997, the Property was in an unclean, unsanitary condition and there were numerous conditions requiring repair (Commission Exhibit 1, p. 12, Complainant Exhibit 5);

7. On May 25, 1997, there were housing code violations that existed on the premises (Commission Exhibit 1, p. 12);

8. The Complainants contacted the Respondents' agent, John Walker, several times between May 25, 1997, and May 30, 1997, regarding needed repairs;

9. The Respondents did not make needed repairs;

10. On May 30, 1997, the Property was inspected by Inspector Bernard Williams, DHCA. Mr. Williams found 35 housing code violations in the Property including a missing smoke detector outside the sleeping areas and an infestation of mice/rats and roaches (Commission Exhibit 1, p. 12);

11. On May 30, 1997, the Property was uninhabitable;

12. On May 30, 1997, the Complainants notified the Respondents of their intention not to take possession of the Property (Commission Exhibit 1, p. 10);

13. The Complainants were required to stay in a hotel room for four days, at \$80.00 per day, due to their inability to take possession of the Property (Complainant Exhibit 3);

14. The receipt given for the security deposit was contained in the lease and did not comply with the provisions of Section 8-203(c) of the State Code (Commission Exhibit 1, p. 3).

CONCLUSIONS OF LAW

1. The premises which are the subject of the Complaint were not tendered to the Complainants in a clean, safe and habitable condition at the commencement of the tenancy in compliance with Section 29-26(n) of the County Code.
2. The lease for the Property never became possessory and no present leasehold interest was created, therefore, Respondents were not entitled to rent;
3. The Respondents' failure to deliver the Property in compliance with Section 29-26(n) of the County Code, justified the Complainants' refusal to take possession of the Property.
4. The Respondents had no reasonable basis for withholding the security deposit and improperly handled and disposed of the security deposit in violation of Section 8-203 of the State Code.
5. The Respondents' failed to provide a security deposit receipt in violation of Section 8-203(a) of the State Code.
6. Respondents created a defective tenancy by violating Section 29-26(n) of the County Code and by violating Section 8-203 of the State Code.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby finds the Respondents to be in violation of applicable law and the lease. As a result thereof a defective tenancy, as defined by the Montgomery County Code, exists.

It is, therefore, ORDERED that:

1. The lease agreement between the Complainants and the Respondents be, and the same hereby is, declared NULL AND VOID;
2. Adjusted prorated rent in the amount of \$133.00 shall be RETURNED to the Complainants;

3. The security deposit in the amount of \$1,375.00 plus simple interest at the rate of four percent per annum, calculated at six-month intervals shall be RETURNED to the Complainants;
4. The first month's rent in the amount of \$1,375.00 plus interest shall be RETURNED to the Complainants; and

See Arthur Treacher's Fish and Chips of Fairfax, Inc. v. Chillum Terrace Partnership, 272 Md. 720, 327 A.2d 282 (1974).

5. The Respondents shall pay to the Complainants the sum of \$25.00 for their failure to provide a receipt for the security deposit as required by Real Property Article Section 8-203(c).

The foregoing is by unanimous vote of all Commissioners present for the hearing, being Edward Myers, John Peterson and Gary G. Everngam.

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

John Peterson Panel Chairperson

Commission on Landlord-Tenant Affairs