BEFORE THE

COMMISSION ON LANDLORD TENANT AFFAIRS

FOR MONTGOMERY COUNTY, MARYLAND

In the Matter of Eddy and Yorlenny Rodriguez **Complainant**	
v.	***Case No.*** **10383**
Donald B. Edwards Rental Facility: 11611 Broadview Road, Wheaton, Maryland (Rental Licensed No. 026057) **Respondents**	

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 26th day of March, 2001, found, determined, and ordered, as follows:

BACKGROUND

On April 14, 2000, Eddy and Yorlenny Rodriguez (the "Complainants"), former tenants at 11611 Broadview Road, Wheaton, 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 alleged that Donald B. Edwards, owner of the Property (the "Respondent"): (1) assessed unjust damages in the amount of $1,466.42 against their $3,100.00 security deposit after the

termination of their tenancy, in violation of § 8-203 (g)(1) and (h)(1) of the Real Property Article of the Annotated Code of Maryland, 1996, as amended ("State Code"); (2) failed to pay them the interest which had accrued on their deposit, in violation of § 8-203 (f)(1) of the State Code; and (3) failed to issue them an itemized list of damages, together with a statement of the cost incurred to repair that damage, within thirty (30) days after the termination of their tenancy, in violation of § 8-203 (h)(1) of the State Code.

Specifically, the Complainants assert that: (1) at the time they vacated the Property, June 30, 1999, the Heating, Ventilation and Air Conditioning ("HVAC") unit was functioning properly; (2) on or about June 30, 1999, the Respondent conducted a final inspection of the Property and checked all facilities and appliances, including the HVAC system, and found them to be working properly; (3) the only deficiency noted during the final inspection was pet odors in the basement, and they do not dispute the Respondent's withholding of $140.25 for materials to correct that problem; (4) they also do not dispute the Respondent withholding $49.60 from their deposit for the final water bill; and (5) within forty-five (45) days after the termination of their tenancy, the Respondent failed to pay them interest which had accrued on their deposit.

The Respondent contends that: (1) the Complainants damaged the HVAC unit, which is on the exterior of the property, and failed to report the problem to him as required by the lease; (2) although he conducted a final inspection of the Property at the time the Complainants vacated, he only turned on the blower switch inside the property, which was properly working,

but did not inspect the HVAC unit; (3) he became aware of the problem in the first week of July 2000 when his painting contractor notified him that the air conditioning was not working; (4) he immediately contacted a service technician who inspected the HVAC unit and determined that the coil was damaged and not holding freon; and (5) he chose to replace the entire HVAC unit, at a cost of $1,725.00 and only charged the Complainants for the service call ($241.42) and the depreciated value of the unit in the amount of $1,225.00.

On November 3, 2000 the Complainants advised the Department that they were amending their complaint to claim, in addition to the refund of the withheld portion of their security deposit plus accrued interest, three times that amount as a penalty, based on the Respondent's unreasonable withholding.

On November 6, 2000, the Department received from the Respondent a check, dated October 31, 2000, payable to the Complainants in the amount of $228.00, which sum represents a refund of the interest which had accrued on the Complainants' security deposit. The Respondent's check was forwarded to the Complainants and received by them in Costa Rica.

After determining that the subject 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 for Monday, January 29, 2001.

The public hearing in the matter of Rodriguez v. Edwards, relative to Case No. 10383, commenced on January 29, 2001, and concluded on that date. However the hearing record was

left open for a period of ten (10) days for the limited purpose of allowing the Department to investigate whether there was any information available from real estate listing services relative to when the Respondent listed the Property for rental, if at all. The record reflects that the Complainants and the Respondent were given proper notice of the hearing date and time. Present at the hearing and presenting testimony and evidence were Complainant Yorlenny Rodriguez, on behalf of herself and her husband, Eddy Rodriguez, and Respondent Donald B. Edwards, who was represented by Steven Shechtel, Esquire.

Without objection from the Complainants or the Respondent, 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 three (3) exhibits offered by the Complainants: (A) receipt for Certified Mail from the US Postal Service, Article #2-124-405-389, addressed to the Respondent at his home address, mailed on March 4, 1999, and delivered on March 5, 1999; the receipt is signed by "M.E. Dalgleish," identified as Complainants' Exhibit No. 1; (B) an envelope addressed to the Complainants, postmarked February 4, 2000, identified as Complainants' Exhibit No. 2; and (C) a drawing of the Property grounds prepared at the hearing by the Respondent, identified as Complainants' Exhibit No. 3.

The Commission also accepted into the record five (5) exhibits offered by the Respondent: (A) a homeowners insurance policy from Erie Insurance Group, Policy #Q58 1505088 M, identified as Respondent's Exhibit No. 1; (B) a photocopy of an envelope addressed to the Complainants postmarked October 29, 1999, with a handwritten notation and address, identified as Respondent's Exhibit No. 2; (C) a check ledger, identified as Respondent's Exhibit No. 3; (D) a photocopy of an envelope addressed to the Respondent postmarked December 28, 1999, with a handwritten note, identified as Respondent's Exhibit No. 4; and (E) a letter from James Carmen, Service Manager, Presidential Heating & Air Conditioning, Inc., dated January 29, 2001, identified as Respondent's Exhibit No. 5.

The hearing record in this matter closed on February 8, 2001, and no additional information or documentation relative to when the Respondent listed the Property for rental was added.

FINDINGS OF FACT

1. On July 7, 1997, the Complainants and the Respondent entered into a two-year lease agreement (the "Lease") for the rental of the Property, which commenced on August 1, 1997, and was due to expire on July 31, 1999.

2. At the commencement of the Lease, the Complainants paid to the Respondent a security deposit in the amount of $3,100.00. The written receipt for the payment of the security deposit is contained at Paragraph 3, "Security Deposit," of the Lease.

3. The Commission credits the testimony of the Complainant, Yorlenny Rodriguez, that on March 5, 1999, she issued the Respondent a written notice of the Complainants' intention to terminate the Lease at the end of June 1999 pursuant to the terms of Paragraph 1, "Transfer Clause," of the addendum attached to the Lease (See Page 14 of Commission's Exhibit No. 1). While the Respondent denies receiving the March 5th notice, Complainant, Yorlenny

Rodriguez's testimony is supported by a Receipt for Certified Mail bearing the signature of an individual residing at the Respondent's home address. (See Domestic Return Receipt, Complainant's Exhibit No. 1). Further, while the Respondent denies recognizing the signature on the Domestic Return Receipt, the Commission is of the opinion that the signature on Complainants' Exhibit No. 1 matches the signature contained in Commission's Exhibit No. 1 on Page 66 as being that of Margaret Dalgleish, an individual that Respondent testified lives at his home address, 224 Quaint Acres Drive, Silver Spring, MD.

4. The Commission finds from the credible testimony of the Complainant, Yorlenny Rodriguez, that Complainant Eddy Rodriguez relocated to Costa Rica at the termination of his employment with the International Monetary Fund, on or about July 1, 1999.

5. The Complainants vacated the Property as of June 30, 1999, and their tenancy terminated as of that date.

6. One June 30, 1999, Complainant, Eddy Rodriguez, and the Respondent conducted a final walkthrough inspection of the Property to determine if any damage had been caused by the Complainants in excess of ordinary wear and tear. No written report or list of damages was produced by either party as a result of the inspection.

7. The Commission credits the testimony of Complainant, Yorlenny Rodriguez, that at the time her husband vacated the Property, he gave the Respondent his forwarding address in Costa Rica, and that he left a "change of address" form with the local US Post Office.

8. On August 15, 1999, (See Page 2 of Commission's Exhibit No. 1) forty-five (45) days after the termination of the Complainant's tenancy, the Respondent created a list of deductions being made from the Complainants' security deposit, itemized as follows:

basement odor (pets)	$ 140.25 (materials only; no charge for labor)
final water bill	49.60
service heatpump and find a bad compressor (General Heating, Inc.) install new compressor	241.42
(Presidential Heat and AC, Inc.)	1,725.00
Total	$2,156.27
Less normal wear and tear reduction	- 500.00
Total due	$1,656.27
Deposit on rental agreement	(3,100.00)

Amount due as deposit return $1,443.73

9. Although the August 15, 1999, itemization of damages is addressed to the Complainants, it does not contain the Complainants' forwarding address in Costa Rica or the Complainants' former address, which is the address of the Property. In fact, it contains no address at all, simply the salutation: "Dear Mr. & Mrs. Rodriguez."

10. The Commission finds that the Respondent did not send the itemized list of damages to the Complainants within thirty (30) days after the termination of their tenancy, by July 30, 1999. The Respondent also failed to provide any probative evidence that he sent the itemized list of damages to the Complainants on August 15, 1999, and the Commission does not find credible the Respondent's testimony that he did send the notice at that time.

11. The Commission credits the testimony of Complainant, Yorlenny Rodriguez, that she contacted the Respondent on several occasions after the termination of the tenancy, in the Fall of 1999, to request the refund of the deposit, and that she gave the Respondent their mailing address in Costa Rica, as well as, a Post Office Box in Florida, and that the Respondent promised to send the refund. The Complainants did not receive the refund, however, which the Respondent should have been aware of from his bank records. The Commission further credits Complainant, Yorlenny Rodriguez's, testimony that while visiting friends in the Washington, D.C. metropolitan area, on or about April 10, 2000, more than ten (10) months after they vacated the Property, she again contacted the Respondent and requested the return of the security deposit, and that the Respondent did send her a security deposit refund check in the amount of $1,443.73 together with a list of the deductions, to the address where she was visiting friends. Thus, the Respondent withheld $1,656.27 from the Complainants' security deposit for damages alleged to be in excess of ordinary wear and tear.

12. The Complainants damaged the Property in excess of ordinary wear and tear during their tenancy by failing to eliminate pet odors from the basement, and the Respondent incurred actual expense to repair that damage in the amount of $140.25. Therefore, this was a charge that could have been reasonably withheld from the deposit.

13. The Complainants failed to pay the final water bill, in the amount of $49.60, at the time they vacated the Property, which is a charge that could have been reasonably withheld from the deposit.

14. The Complainants did not damage the exterior HVAC unit at the Property during their tenancy. The Commission does not find credible the Respondent's testimony or evidence that the Complainants' two female dogs may have urinated on the HVAC unit and caused the condenser coil to corrode. The only evidence provided by Respondent was a letter from Presidential Heating and Air Conditioning, Inc., dated January 29, 2001 (See Respondent's Exhibit No. 5), stating that animal urine will damage an outdoor HVAC unit's condenser. There was no evidence offered to establish that the Complainants' dogs had urinated on the condenser units or that this was the cause of the failure to Respondent's outdoor HVAC unit. There was no proof of what damaged the outdoor unit. The HVAC unit may have just as likely been damaged by improper installation, product defect or by the repairing technician. There was nothing offered by

the Respondent to demonstrate that Complainants were responsible for the HVAC problem and nothing that persuaded the Commission that Complainants should be financially responsible for the risks that Respondent bears as a home owner. The Commission found credible the testimony of Complainant, Yorlenny Rodriguez, that their dogs were female and could not have urinated on the HVAC unit's condenser coil, and that the HVAC unit's condenser coil was outside the area that was fenced off for the dogs' use.

15. The Commission finds that the Respondent had no reasonable basis to withhold either the cost of the HVAC service call, $241.42, or the depreciated cost of replacement of the HVAC unit, $1,225.00, from the Complainants' security deposit, and that his actions were not in good faith, as the Respondent lacked any substantial credible evidence that Complainants had damaged the HVAC unit at the Property, and further finds that the facts and circumstances of this case warrant the award of a penalty against the Respondent.

16. On October 31, 2000, sixteen (16) months after the termination of the Complainants' tenancy, the Respondent issued to them a check, in the amount of $228.00, which sum represented the correct amount of interest which had accrued on their security deposit.

17. The Respondent failed to refund any portion of the Complainants' $3,100.00 security deposit or accrued interest within forty-five (45) days after the termination of their tenancy.

18. The Commission finds that the Respondent knew the address of the Complainants in Costa Rica and had an obligation to both notify them regarding the disposition of their security deposit plus interest, as well as, to refund the correct amount of the deposit and the interest in a timely manner, but intentionally failed to do so.

19. The Commission finds that the Respondent's conduct and actions regarding the refund of the Complainants' security deposit and accrued interest were willful and intended to deny the Complainants their rights under the State security deposit law, and were also an egregious attempt to deny the Complainants the refund of the bulk of their security deposit and accrued interest to which they were rightfully entitled.

CONCLUSIONS OF LAW

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

1. The Commission notes that Title VIII, "Landlord and Tenant," of the State Code, including § 8-203, "Security Deposits," has been amended, and that the amendments became effective as of October 1, 1999. However, the termination of the Complainants' tenancy and the Respondents' alleged violations of § 8-203 took place prior to October 1, 1999, and therefore, although the hearing in this matter took place after October 1, 1999, the pre-October 1, 1999, provisions of Title VIII and § 8-203 apply in this case.

2. The Complainants issued proper written notice to the Respondent of their intention to vacate the Property by June 30, 1999, in accordance with the terms and conditions of the Lease and the

Complainants' notice and the circumstances complied with the requirements of the Lease Addendum relative to premature termination of the Lease in the event of job transfer.

3. The Respondent failed to issue to the 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, and as a result, pursuant to § 8-203 (h)(2) of the State Code, the Respondent has forfeited the right to withhold any portion of the Complainants' security deposit for damages.

4. The Respondent had a reasonable basis to withhold from the Complainants' security deposit the amount of the final water, $49.60, and the cost of materials used to eliminate pet odors from the basement of the Property, $140.25; however, based on his failure to issue to the Complainants an itemized list of those damages within thirty (30) days after the termination of their tenancy, pursuant to § 8-203 (h)(2) of the State Code, the Respondent has forfeited his right to withhold these amounts from the Complainants' security deposit.

5. The Respondent improperly and without a reasonable basis withheld from the Complainants' security deposit the cost of the HVAC service call, $241.42, and the depreciated cost of replacement of the HVAC unit, $1,225.00, which were not damaged by the Complainants, in violation of § 8-203(g)(1) and (f)(4) of the State Code.

6. The Respondent, without a reasonable basis, failed to refund any portion of the Complainants' security deposit or accrued interest within forty-five (45) days after the termination of their tenancy, in violation of Paragraph 3, "Security Deposit," of the Lease and § 8-203(f)(1) and (f)(4) of the State Code.

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

8. The Commission concludes that the Respondent's withholding from the Complainants' security deposit the cost to service and replace that HVAC unit ($1,466.42), which was not damaged beyond normal wear and tear caused by the Complainants, his failure to notify the Complainants regarding the disposition of their security deposit within thirty (30) days after the termination of their tenancy, and his refusal to refund any portion of the security deposit until the Complainants made repeated requests, not only violated § 8-203(g)(1), (f)(1) and (4) and (h)(1) and (2) of the State Code, but that his actions were willful, unreasonable and egregious, and therefore, pursuant to § 8-203(f)(4) of the State Code, the Respondent is liable to the Complainants for a penalty of up to threefold the unreasonably withheld amount.

9. Accordingly, the Commission concludes that the circumstances of this case warrant an award of a one-fold penalty of $1,466.42, which is the amount unreasonably withheld from the Complainants' security deposit, pursuant to § 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:

1. Pay the Complainants $3,122.69, which sum represents the Complainants' security deposit ($3,100.00), less the amount previously refunded by the Respondent ($1,443.73), which equals $1,656.27, plus a one-fold penalty of $1,466.42 which is the amount unreasonably withheld by the Respondent for the repair and replacement of the HVAC unit.

The foregoing decision was concurred in unanimously by Commissioners Andrea Sonde-Hawthorne, Kevin Gannon and Martin Schnider, Panel Chairperson.

To comply with this Order, Respondent, Donald B. Edwards, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within fifteen (15) calendar days of the date of this Decision and Order, a check made payable to Eddy and Yorlenny Rodriguez in the full amount of $3,122.69.

The Respondent, Donald B. Edwards, is 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 there is compliance with this Decision and Order.

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

Any party aggrieved by the 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, pursuant to the Maryland Rules governing administrative appeals.

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Martin Schnider, Panel Chairperson
Commission on Landlord-Tenant Affairs