BEFORE THE

COMMISSION ON LANDLORD-TENANT AFFAIRS

FOR MONTGOMERY COUNTY, MARYLAND

In the Matter of Bryan and Lisa Randall **Complainant**	
v.	***Case No. 10585***
Leroy and Mae Murray Rental Facility: 17811 Cottonwood Terrace, Gaithersburg, MD (Unlicensed Rental Facility) **Respondents**	

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, this 3rd day of April, 2001, found, determined and ordered, as follows:

BACKGROUND

On August 17, 2000, Bryan and Lisa Randall (the "Complainants"), former tenants at 17811 Cottonwood Terrace, Gaithersburg, Maryland, (the "Property"), an unlicensed 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 Leroy and Mae Murray (the "Respondents'), owners of the Property: (1)

assessed unjust charges against their $1,450.00 security deposit plus $87.00 accrued interest after the termination of their tenancy, in violation of § 8-203(e)(4) of the Real Property Article, Annotated Code of Maryland, 1999 as amended ("State Code"), and (2) failed to issue them an itemized list of damages together with a statement of the actual costs incurred to repair that damage within forty-five (45) days after the termination of their tenancy, in violation of § 8-203 (g)(1) of the State Code, and therefore, pursuant to § 8-203 (g)(2) of the State Code, the Respondents have forfeited their right to withhold any portion of their security deposit plus accrued interest, and they are liable for a penalty of three times the withheld amount.

Specifically, the Complainants assert that: (1) in March 2000, the Respondents issued them verbal notice to vacate the Property by July 1, 2000; (2) they responded by issuing verbal notice to the Respondents of their intention to vacate the Property by May 31, 2000, and they also requested a final walkthrough inspection; (3) the Respondents agreed to the lease termination date of May 31, 2000, and they conducted a final walkthrough inspection of the Property with Respondent Mae Murray on May 22, 2000; (4) as a result of the final inspection, the following list of damages and repair costs was created and agreed to: carpet cleaning ($199.95), wood floor refinishing ($300.00), garage door repair ($50.00), fireplace cleaning (no charge) and replacement of the patio door screen (no charge); (5) the list of agreed upon damages and deductions was initialed by Respondent Mae Murray; (6) they vacated the Property on May 27, 2000; and (7) on August 29, 2000, ninety (90) days after the termination of their tenancy, the Respondents issued them an itemized list of damages totaling $1,517.00, and a refund check of $20.00.

The Respondents contend that: (1) the Complainants damaged the Property in excess of ordinary wear and tear during their tenancy; (2) the charges assessed against the Complainants'security deposit were for actual costs incurred to repair that damage; (3) they were unaware of the requirement to obtain a Rental Facility License prior to offering the Property for rent; and (4) they were unaware of the requirement to notify the Complainants within forty-five (45) days regarding the disposition of their security deposit.

The Complainants are seeking an Order from the Commission for the Respondents torefund their entire $1,450.00 security plus $87.00 accrued interest ($1,537.00), plus three times that amount ($4,611.00) as a penalty, for a total award of $6,148.00.

After determining that the complaint was not susceptible to conciliation, the Departmentduly referred this case to the Commission for its review, and on January 9, 2001, the Commission voted to accept jurisdiction of this case, and scheduled a public hearing for February 15, 2001.

The public hearing in the matter of Randall v. Murray, relative to Case No.10585, commenced on February 15, 2001, and concluded 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 Complainant, Bryan Randall, on behalf of himself and his wife, Lisa Randall, and the Respondents, Leroy Murray and Mae Murray. There were no witnesses other than the parties present at the hearing.

Without objection from the Complainant or the Respondents, the Commission enteredinto the record of the hearing the case file compiled by the Department, identified as Commission Exhibit No 1. The Commission also entered into the record two (2) exhibits offered by the Respondents: a photograph of a room painted yellow and blue, identified as Respondents' Exhibit No. 1, and a series of 5 photographs of the carpet, identified as Respondents' Exhibit No. 2a - 2e.

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 received at the hearing, the Commission makes thefollowing findings of fact:

1. The Respondents failed to obtain a Rental Facility License prior to offering the Property for rent to the Complainants, or at any time during the Complainants' tenancy.

2. On August 17,1998, the Complainants signed a one-year lease agreement with the Respondents (the "Lease") for the rental of the Property, which commenced on October 1, 1998, and expired on September30, 1999.

3. On August 17, 1998, the Complainants paid the Respondents a security deposit of $1,450.00, which is receipted at Paragraph 3, "Security Deposit," in the Lease.

4. After the initial Lease term expired, the Complainants remained as tenants in the Property on a month-to-month basis.

5. In March 2000, the Respondents issued the Complainants a verbal notice to quit and vacate the Property by July 1, 2000.

6. On April 27, 2000, the Complainants issued the Respondents verbal notice of their intention to vacate the Property by May 31, 2000, and they also requested to be present for a final walkthrough inspection of the Property.

7. The Complainants and the Respondents agreed to the Lease termination date of May 31, 2000, and on May 22, 2000, Respondent Mae Murray conducted a final walkthrough inspection of the Property with the Complainants at which time the following damages were noted in writing:

a. estimate for carpet cleaning	$ 199.95
b. floor refinishing (up to)	300.00
c. garage door	50.00
d. fireplace cleaning	(no charge)
e. patio door screen replaced	(no charge)

TOTAL	$ 549.95

8. By correspondence dated May 24, 2000, the Complainants requested that the Respondents return $1,087.05 representing their security deposit ($1,450.00) plus accrued interest ($87.00) less the following repair costs which they agreed could be deducted: $199.95 for carpet cleaning, $200.00 towards the refinishing the wood floors and $50.00 towards the repair of the garage door, for a total deduction of $449.95. The Complainants also provided their forwarding address.

9. On August 29, 2000, ninety (90) days after the termination of the Complainants' tenancy, the Respondents sent to the Complainants a list of damages being assessed against their security deposit plus accrued interest, itemized as follows:

a. Wood Floor	$ 390.00
b. Carpet Shampoo	199.00
c. Garage Door	245.00
d. Repaint 2 Rooms	350.00
e Stairwell Rods	48.00
f. MB/R Handle	20.00
g Chimney Sweep	39.00
h Kitchen/Stove Cleaning	30.00
i. Broken Water Faucet (front)	20.00
j. Water Bill	101.00
k Garage Opener	75.00
TOTAL	$1,517.00

10. By the same August 29, 2000 letter, the Respondents issued a security deposit refund check to the Complainants in the amount of $20.00, which they did not cash.

11. The Commission credits the Complainant Bryan Randall's testimony that at the time the Complainants vacated the Property, May 27, 2000, they paid the final water bill. The Complainant's testimony is supported by the two water bills submitted as part of the complaint (See pages 11 and 12 of Commission's Exhibit No. 1).

12. Paragraph 3 of the Lease, entitled "Security Deposit," required the Respondents to provide the Complainants with a written list of any damages to the Property being charged against their security deposit, together with a statement of costs actually incurred, within thirty (30) days after the termination of their tenancy.

13. Paragraph 3 of the Lease also required the Respondents to return any unused portion of the security deposit, together with simple interest accrued, to the Complainants within forty-five (45) days after the termination of their tenancy. The Lease provides no penalty for the failure to comply with this requirement.

14. Section 8-203, "Security Deposits, of the State Code, was changed, effective October 1, 1999, to require the list of damages, the statement of costs actually incurred and the return of the security deposit all be accomplished within forty-five (45) days of the termination of the tenancy.

15. The Respondents testified at the hearing that they believed that because of the cordial relationship that they had with the Complainants, it was not necessary for them to comply with the security deposit provisions of the Lease or of the State Code.

16. The Respondents completely ignored their obligations with respect to notification and return of the Complainants' security deposits, as required by both Paragraph 3 of the Lease and § 8-203 of the State Code.

17. As of the termination date of the Complainants' tenancy, May 31, 2000, interest in the amount of $87.00 had accrued on the Complainants' security deposit.

18. Based on the deductions from the security deposit agreed upon by the Complainants and Respondent, Mae Murray, at the final walkthrough inspection of the Property on May 22, 2000 (See Findings of Fact No. 7 above), the Respondents had no reasonable basis to withhold from the Complainants' security deposit plus accrued interest any more than $549.95.

CONCLUSIONS OF LAW

Accordingly, based upon a fair consideration of the testimony and evidence contained in the record, the Commission of 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. Therefore, although the Lease was entered into prior to October 1, 1999, including certain requirements and timelines regarding the handling and disposition of the security deposit, the Respondents' alleged violations of § 8-203 took place after October 1, 1999, and as a result, the newly enacted amendments apply in this case.

2. The Respondents failed to issue the Complainants an itemized list of damages together with a statement of the cost actually incurred to repair that damage within forty-five (45) days after the termination of their tenancy, in violation of § 8-203(g)(l) of the State Code, and therefore, pursuant to § 8-203(g)(2) of the State Code, the Respondents have forfeited their right to withhold any portion of the Complainants' security deposit plus accrued interest for damages.

3. The Respondents assessed unjust charges against the Complainants' security deposit after the termination of their tenancy to repair damages that were not agreed to, were not in excess of ordinary wear and tear, were improvements to the Property made by the Respondents in preparation for its sale, or were not the Complainants' responsibility to repair, in violation of § 8-203(f)(1)(i) and (f)(2) of the State Code.

4. The Respondents failed to refund any portion of the Complainants' security deposit, together with simple interest which had accrued in the amount of 4 percent per annum, within

forty-five (45) days after the termination of the Complainants' tenancy, in violation of § 8-203(e)(l) of the State Code.

5. The Respondents had no legal or factual basis to withhold from the Complainants' security deposit plus accrued interest any amounts in excess of the repair costs agreed upon during the final inspection of the Property, which sum is $549.95. Therefore, the Respondents unreasonably withheld $967.05 of the Complainants' security deposit plus accrued interest, after the termination of their tenancy ($1,450.00 deposit + $87.00 interest = $1,537.00 - $549.95 agreed damages = $987.05 - $20.00 deposit refund = $967.05), in violation of § 8-203(e)(4) of the State Code.

6. In addition to the forfeiture of their right to withhold any portion of the Complainants' security deposit plus accrued interest, the Respondents are subject to the penalty provisions of § 8-203(e)(4) of the State Code because they, without a reasonable basis, explanation or excuse, failed to refund $967.05 of the Complainants' security deposit plus accrued interest.

7. Based on the Complainants' failure to cash the Respondents' $20.00 security deposit refund, the Commission concludes that no portion of the Complainants' $1,450.00 security deposit or $87.00 accrued interest was refunded by the Respondents.

8. The Respondents' failure to handle and dispose of the Complainants' security deposit in accordance with the applicable provisions of § 8-203 of the State Code and the applicable provisions of the Lease has created a defective tenancy.

ORDER

In view of the foregoing, the Commission of Landlord-Tenant Affairs hereby orders the Respondents to pay the Complainants **$1,937.00** which sum represents the refund of the Complainants' entire security deposit of $1,450.00, plus accrued interest in the amount of $87.00, and a penalty of $400.00.

The foregoing decision was concurred in unanimously by Commissioners Roger Luchs, Mattie Ligon, and Gary G. Everngam, Panel Chair.

To comply with this Order, Respondents, Leroy and Mae Murray, 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, a check payable to Bryan and Lisa Randall in the full amount of $1,937.00.

Respondents, Leroy and Mae Murray, 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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Gary G. Everngam, Panel Chairperson