BEFORE THE

COMMISSION ON LANDLORD TENANT AFFAIRS

FOR MONTGOMERY COUNTY, MARYLAND

In the Matter of Oliver Harris and Laura Linderman Complainants	
v.	Case No. 10609
Dale and Patti Ross Rental Facility: 6209 Bannockburn Drive, Bethesda, MD (Rental Facility License No. 000278) 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 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 24th day of July, 2001, found, determined, and ordered, as follows:

BACKGROUND

On September 14, 2000, Oliver Harris and Laura Linderman (the “Complainants”), former tenants at 6209 Bannockburn 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 within the Department of Housing and Community Affairs, (the “Department”) in which they alleged that Dale and Patti Ross, owners of the Property (the “Respondents”), and their management agent, Mary Vaarwerk, Marydale Realty Management, Inc. (the “Agent): (1) unreasonably withheld $500.00 from their security deposit after the termination of their tenancy, in violation of § 8-203(f)(1)(i), “Security deposits,” 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 cost 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.

Specifically, the Complainants assert that: (1) after issuing proper notice to the Respondents' Agent, they vacated the Property on June 30, 2000, having paid rent in full through that date; (2) they followed the move-out instructions contained in the lease, as well as those contained in the move-out letter from the Agent; (3) the Property was not damaged in excess of ordinary wear and tear at the time they vacated; (4) on August 9, 2000, the Respondents sent them a partial refund of their security deposit, in the amount of $956.00, and advised them that a total of $500.00 was being withheld from their deposit: $150.00 for cleaning, and $350.00 for yard work.

The Respondents assert that the Complainants failed to properly clean the Property or do yard work required by the lease agreement prior to vacating, and as a result, they incurred actual expense in the amount of $500.00 to clean the Property and to cut the grass, trim the shrubbery and remove leaves, the cost of which was properly deducted from the Complainants' security deposit.

By correspondence dated January 4, 2001, the Complainants amended their complaint to request, in addition to the refund of the $500.00 withheld from their security deposit, three times that amount ($1,500.00) as a penalty based on the Respondents' unreasonable withholding.

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 January 9, 2001, the Commission accepted jurisdiction of the case and subsequently scheduled a public hearing for March 13, 2001. However, due to scheduling conflicts, the Commission determined to postpone the public hearing until April 23, 2001. By a letter dated April 9, 2001, the Respondents requested that the April 23rd public hearing be postponed because they were unavailable on that date. The Commission granted the Respondents' request, and the public hearing was rescheduled for May 29, 2001.

The public hearing in the matter of Oliver Harris and Laura Linderman v. Dale and Patti Ross, relative to Case No. 10609, commenced on May 29, 2001, and concluded on that date. The record reflects that the Complainants and the Respondents were given proper notice of the hearing date and time. Present at the hearing and presenting testimony and evidence were: Complainants Oliver Ross and Laura Linderman, Respondent Dale Ross, on behalf of himself and Respondent Patti Ross, one witness called by the Respondent, management agent Mary Vaarwerk, and one witness called by the Commission, the Department's Investigator, Deborah Koss.

Without objection from the Complainants or the Respondents, the Commission entered into the record of the hearing the case file compiled by the Department, identified as Commission's Exhibit No. 1. Without objection from the Complainants, the Commission also accepted into evidence at the hearing 17 exhibits offered by the Respondents: 16 photographs identified as Exhibit Nos. 2-17, and a two-page summary of comparison repair costs, identified as Exhibit No. 18.

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. On May 21, 1999, the Complainants executed a one-year lease agreement (the "Lease") with the Respondents' Agent for rental of the Property, which commenced on June 1, 1999, and expired on May 31, 2000.

2. At the commencement of the Lease, the Complainants paid to the Respondents a security deposit in the amount of $1,400.00. The written receipt for the payment of the security deposit is contained at Paragraph 3, "Security Deposit," in the Lease.

3. Complainants issued the Respondent a written notice of their intention to vacate the Property by June 30, 2000, one month after the initial Lease term expired.

4. By correspondence dated May 24, 2000, the Agent advised the Complainants that Marydale Realty was in receipt of their notice to quit and vacate the Property by June 30, 2000, and provided the Complainants with a list of "Vacate Instructions."

5. The Complainants vacated the Property on June 30, 2000, having paid rent in full to the Respondents through that date, and their tenancy terminated as of that date.

6. By correspondence dated July 27, 2000, the Agent advised the Complainants that, "…a deduction for yard work and cleaning at the …property will be taken from your security deposit. Such deduction should not exceed $600.00."

7. By correspondence dated August 9, 2000, forty (40) days after the Complainants vacated the Property, the Respondents' Agent sent the Complainants a "Tenant Refund Statement" advising them that $500.00 was being withheld from their security deposit, $150.00 for general house cleaning and $350.00 for yard work. The letter also contained a security deposit refund check in the amount of $956.00, which sum represented the Complainants' $1,400.00 security deposit, plus $56.00 accrued interest, less the $500.00 withheld.

8. The Commission finds that the Complainants did not damage the Property in excess of ordinary wear and tear as a result of their tenancy, and they left it in a "broom-clean condition, free of trash and debris" as required by Paragraph 23a. of the Lease, "Move-Out Inspection/Surrender of Premises," at the time they vacated. This finding is supported by the credible testimony of Commission's witness, Investigator Deborah Koss, that the cleaning contractor employed by the Respondents, Pearl Robbins, Axion Cleaning Services: (a) charges her customers a minimum of $150.00 to clean a single-family home, which includes cleaning the stove, refrigerator, bathrooms, cabinets and waxing floors; and (b) if the Property were filthy, there would have been a higher charge. Therefore, had the Complainants left the Property in an unclean condition, as claimed by the Respondents, the cleaning charge by Axion Cleaning Services would have been more than the $150.00 charged. The Commission further finds that basic cleaning of a rental property between tenancies is a normal and anticipated business expense for which a landlord is responsible, and the cleaning of the Property after the termination of the Complainants' tenancy was not to remove any trash and debris left by the Complainants or to repair any damage caused by the Complainants in excess of ordinary wear

and tear, and therefore, Respondents' assessment of $150.00 for cleaning charged against the Complainants' security deposit is unsupported, unreasonable and is disallowed.

9. The Commission finds that the Complainants properly maintained the yard, and kept the grass and shrubbery trimmed during their tenancy as required by Paragraph 9, "Maintenance," and Paragraph 35, "Additional Provisions," of the Lease. This finding is supported by the credible testimony and photographic evidence of the Complainants that:

(a) they mowed the lawn at the Property the day before the end of the Lease term of June 30, 2000; (b) they trimmed the bushes prior to moving out, including a large bush in front of the house; (c) the fence was covered with vines when they moved into the Property which they removed during the lease term; and (d) the mulch beds did not exist during their lease term. The Commission also credits the testimony of Commission's witness, Investigator Deborah Koss, that the lawn service contractor employed by the Respondents, Raymond Olund, Ray's Lawn Service: (a) cut the grass approximately two (2) weeks after the Complainants vacated the Property, and based on rain fall during that period of time, he was of the opinion that there could have been significant growth between the time the Complainants vacated and the time he cut the grass; and (b) the bushes at the Property are about 12 feet high, taller than a one-story house, and had been trimmed to a point as high as a normal step ladder. Therefore, the $350.00 charge assessed against the Complainants' security deposit for yard maintenance is unsupported, unreasonable and is disallowed.

10. The Respondents failed to provide any probative evidence that the Property was damaged by the Complainants in excess of ordinary wear and tear, and the Commission is not persuaded by the Respondents' testimony that the cleaning of the house or the maintenance of the yard was necessitated by damages caused by the Complainants.

11. Regarding the Complainants' allegation that the Respondents failed to send them notice of the deductions being made from their security deposit in a timely manner, the Commission finds that the Respondents did send such notice to the Complainants within forty-five (45) days after the termination of their tenancy, in accordance with § 8-203(g)(1) of the State Code.

12. The Respondents, without a reasonable basis, withheld $500.00 from the Complainants' security deposit after the termination of their tenancy, in violation of § 8-203(e)(4) of the State Code. However, the Commission finds that the Respondents' actions do not rise to the level of egregiousness and bad faith necessary to award a penalty, and therefore, Complainants request for such an award is denied.

13. The Respondents' failure to handle and dispose of the Complainants' security deposit in accordance with the requirements of § 8-203, "Security Deposits," of the State Code, and Paragraph 3, "Security Deposit," of the Lease, has caused a defective tenancy.

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. 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 and are cited throughout.

2. The Complainants faithfully performed the maintenance activities required of them by the Lease during their tenancy, which were to "leave the premises in broom-clean condition, free of trash and debris," and "keep grass and shrubbery trimmed" and "maintain the yard," and they did not damage the Property in excess of ordinary wear and tear as a result of their tenancy. Therefore, the Respondents had no reasonable basis to withhold any portion of the Complainants' security deposit for house cleaning or yard work, and such withholding constitutes a violation of § 8-203(f)(1)(i) of the State Code, and Paragraph 3 of the Lease, and has caused a defective tenant.

3. The Respondent did not produce any probative or persuasive testimony or evidence at the hearing that the Property was damaged beyond normal wear and tear as a result of the Complainants' tenancy or that they incurred any additional expenses in the normal course of preparing the Property to be re-rented after the termination of the Complainants' tenancy. The Commission finds that the cleaning of the Property after the termination of the Complainants' tenancy was not to remove any trash and debris or to repair any damage caused by the Complainants in excess of ordinary wear and tear, but were normal turn-over or re-decoration expenses to prepare the Property for re-rental, which are normal and anticipated business expenses for which the Respondents are responsible. The Commission concludes that the Property was not damaged beyond normal wear and tear by the Complainants, and as a result, the Respondents were not entitled to withhold any portion of the Complainants' security deposit on the basis of damage to the Property. Therefore, the Respondents' withholding of $500.00 from the Complainants' security deposit for damages that were not in excess of ordinary wear and tear, constitutes a violation of § 8-203 (f)(1)(i) of the State Code, and has caused a defective tenancy.

4. The Commission concludes that the Respondents' withholding of $500.00 from the Complainants' security deposit was unreasonable and an attempt by the Respondents to have the Complainants pay for normal turn-over or re-decoration activities that were clearly the Respondents' responsibility to pay for at the time the Property was being prepared for re-rental, which constitutes a violation of § 8-203(e)(4) of the State Code. However, to award a penalty, as requested by the Complainants, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Respondents' conduct in wrongfully withholding part of the Complainants' deposit and whether or not the Respondents acted in bad faith. Although the Respondents had no reasonable basis to withhold $500.00 from the Complainants' security deposit, their actions were not egregious or in bad faith, and therefore, the Complainants' request for a threefold penalty of the withheld amount is hereby DENIED.

5. The Respondents' failure to handle and dispose of the Complainants' security deposit in accordance with the applicable provisions of § 8-203, "Security Deposits," of the State Code and Paragraph 3, "Security Deposit," of the Lease, has caused a defective tenancy.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby Orders the Respondents to pay the Complainants **$500.00**, which sum represents the amount unreasonably withheld from the Complainants' security deposit.

Commissioners Andrea Sonde-Hawthorne, Tina Smith Nelson and Kevin Gannon, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this order, respondents, Dale and Patti Ross, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th floor, Rockville, Maryland 20850, within thirty (30) calendar days of the date of this Decision and Order, a check made payable to Oliver Harris and Laura Linderman in the full amount of $500.00

The Respondents, Dale and Patti Ross, are 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 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 the Respondents have not, within thirty (30) 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 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, pursuant to the Maryland Rules governing administrative appeals. Be advised that pursuant to Section 29-49 of the County Code, should the Respondents choose to appeal the Commission's Order, they must post a bond with the Circuit Court in the amount of the award ($500.00) if they seek a stay of enforcement of this Order.

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Kevin Gannon, Panel Chairperson
Commission on Landlord-Tenant Affairs