

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

<p>In the Matter of</p> <p>Michael Gerdes and Melinda Larsen</p> <p>Complainant</p>	
<p>v.</p>	Case No. 10754
<p>John Bell, Esquire</p> <p>Rental Facility: 4018 Lawrence Avenue, Kensington, Maryland (Rental Licensed No. 006223)</p> <p>Respondents</p>	

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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 23rd day of April, 2001, found, determined, and ordered, as follows:

BACKGROUND

On November 30, 2000, Michael Gerdes and Melinda Larsen (the "Complainants"), former tenants at 4018 Lawrence Avenue, Kensington, 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 John Bell, owner of the Property (the "Respondent"): (1) failed to conduct a final walk through inspection of the Property within five (5) days before or five (5) days after the termination of their tenancy, in violation of § 8-203 (f)(1)(v) of the Real Property Article, Annotated Code of Maryland, 1999, as amended (the "State Code"); (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 and therefore, pursuant to Section 8-203(g)(2) of the State Code, the Respondent has forfeited his right to withhold any portion of their \$875.00 security deposit plus accrued interest for damages; (3) failed to credit their security deposit with 4% simple interest per annum, which sum is \$35.00, in violation of § 8-203(e)(4) of the State Code; (4) failed to place their security deposit in an escrow account in the State of Maryland, in violation of § 8-203 (d)(i)-(iv) and § 8-203(2)(i) of the State Code; and (5) based on the numerous violations of the State Code, the Respondent is liable to them for the refund of their entire security deposit (\$875.00) plus accrued interest (\$35.00), plus three times that amount \$2,730.00, as a penalty.

Specifically, the Complainants assert that: (1) on July 24, 2000, they issued the Respondent a written notice of their intention to vacate the Property by August 31, 2000, which also advised the Respondent of their forwarding address; (2) they vacated the Property on August 31, 2000, and they also requested a final walk through inspection of the Property; (3) after scheduling and subsequently canceling the final inspection on two occasions (September 1st and 5th), on September 6, 2000, a final walk through inspection was conducted with a representative of the Respondent, but no written report was generated by either party; (4) they agreed to return to the Property to mow the lawn and clean the gutters, which they did on September 10, 2000, and they further agreed to pay the cost of carpet cleaning; (5) on October 19, 2000, forty-nine (49) days after the termination of their tenancy, the Respondent issued them an itemized list of damages totaling \$1,246.41, which exceeded the amount of their deposit, and a demand for payment of an additional \$371.41 to cover damages to the Property in excess of ordinary wear and tear; and (6) the Respondent failed to credit their security deposit with any interest.

The Respondent contends that: (1) the Complainants' pets 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) he was aware of his responsibility to send the list within forty-five (45) days but that his "agent" missed the timeline by four (4) days; and (4) the failure to apply accrued interest to the security deposit was an additional oversight.

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 March 6, 2001, the Commission accepted jurisdiction of the case and scheduled a public hearing for Tuesday, April 17, 2001.

The public hearing in the matter of Gerdes and Larsen v. Bell, relative to Case No. 10754, commenced on April 17, 2001, and concluded on that date. 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 Complainants Michael Gerdes and

Melinda Larsen, and Respondent John Bell, who was represented by Harry L. Stone, Esquire. Mr. Bell requested that he be excused prior to the commencement of the hearing, and the Commission granted his request.

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.

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FINDINGS OF FACT

1. On August 4, 1999, the Complainants and the Respondent entered into a one-year lease agreement (the "Lease") for the rental of the Property, which commenced on September 1, 1999, and was due to expire on August 31, 2000.
2. At the commencement of the Lease, the Complainants paid to the Respondent a security deposit in the amount of \$875.00. The written receipt for the payment of the security deposit is contained at Paragraph 3, "Security Deposit," in the Lease.
3. On July 24, 2000, the Complainants issued the Respondent a written notice of their intention to vacate the Property by August 31, 2000, and their tenancy terminated as of that date.
4. On September 6, 2000, more than five (5) days after the termination of the Complainants' tenancy, the final walk through inspection of the Property was conducted with the Complainants and the Respondent's representative. No written report or list of damages was produced by either party as a result of the inspection. The Commission credits the testimony of the Complainants that the Respondent's representative only requested that the lawn be cut and the gutters cleaned. The Commission further credits the testimony of the Complainants that they did return to the Property on September 10, 2000, at which time they mowed the lawn and cleaned the gutters, as requested. The Commission also credits the testimony of the Complainants that they gratuitously offered to pay for the carpet to be cleaned.
5. The Respondent stipulated that the Complainants' Security Deposit was not returned to Complainants within forty-five (45) days after the termination of the tenancy, and that notice regarding the disposition of the Complainants' deposit was sent to Complainants four (4) days after the expiration of the relevant forty-five (45) day time period.
6. The Respondent failed to offer any probative testimony or evidence that the carpet in the Property was in need of replacement at the expiration of the Complainants' tenancy, and as a result, the Commission finds that the carpet was not damaged in excess of ordinary wear and tear by the Complainants as a result of their tenancy. The Commission also notes that the subject carpet was replaced during the subsequent tenant's occupancy of the Property, more than forty days (45) after the termination of the Complainants' tenancy.

7. The Respondent failed to credit the Complainants with one full years' simple interest which had accrued on their security deposit at the rate of 4% per year, which sum is \$35.00 ($\$875.00 \times 4\% = \35.00).

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 that the Respondent had no reasonable basis to withhold the cost of gutter cleaning or the cost of the carpet replacement from the Complainants' security deposit.

9. The Respondent's failure to properly handle and dispose of the Complainants' security deposit in accordance with § 8-203, "Security Deposits," of the State Code and Paragraph 3, "Security Deposit," of the Lease has caused a defective tenancy, and the Commission further finds that the facts and circumstances of this case warrant the award of a penalty against the Respondent.

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 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 forty-five (45) days after the termination of the 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 Respondent has forfeited the right to withhold any portion of the Complainants' security deposit for damages.

2. The Respondent improperly and without a reasonable basis withheld from the Complainants' security deposit the cost of the carpet replacement which was not damaged by the Complainants in excess of normal wear and tear, and the cost of gutter cleaning, which was work done by the Complainants, in violation of § 8-203(e)(4) of the State Code.

3. 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 § 8-203(e)(4) of the State Code.

4. The Respondent's failure to credit the Complainants' security deposit with the correct amount of accrued interest constitutes a violation of § 8-203(e)(1) and (2) of the State Code and Paragraph 3, "Security Deposit," of the Lease, and has caused a defective tenancy.

5. The Respondent's failure to handle and dispose of the Complainants' security deposit and accrued interest in accordance with the applicable provisions of § 8-203 of the State Code has caused a defective tenancy.

5. The Commission concludes that the Respondent's withholding from the Complainants' security deposit the cost to replace the carpet 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 forty-five (45) days after the termination of their tenancy, and his refusal to attend a walk through inspection until the Complainants made repeated requests, not only violated the applicable provisions of § 8-203 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 amount of the security deposit plus accrued interest.

6. Accordingly, the Commission concludes that the circumstances of this case warrant an award of the refund of the Complainants' entire security deposit (\$875.00) plus accrued interest (\$35.00), and a one-fold penalty of \$875.00, which is the amount unreasonably withheld from the Complainants' security deposit.

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ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby Orders the Respondent to pay the Complainants \$1,820.00, which sum represents the Complainants' security deposit (\$875.00), accrued interest (\$35.00) plus a one-fold penalty of the withheld amount (\$910.00).

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

To comply with this Order, Respondent, John Bell, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order, a check made payable to Michael J. Gerdes and Melinda Larsen in the full amount of \$1,820.00.

The Respondent, John Bell, is 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 Respondent has 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.

Martin Schnider, Panel Chairperson
Commission on Landlord-Tenant Affairs