BEFORE THE

COMMISSION ON LANDLORD TENANT AFFAIRS

FOR MONTGOMERY COUNTY, MARYLAND

In the Matter of Sione Finau, et al. **Complainants**	
v.	***Case No.* 11957**
Rose A. Hoage, et al. Rental Facility: 10803 Stella Court, Kensington, Maryland (Rental Facility License No. 28704) **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 (“County Code”), and the Commission having

considered the testimony and evidence of record, it is therefore, this 12th day of April, 2002, found, determined, and ordered, as follows:

INTRODUCTION

At the outset, this case presents some pre-hearing procedural issues which the Commission wishes to address before proceeding to the merits of the Complainants' case. As a preface, it should be noted that the Office of Landlord and Tenant Affairs, within the Department of Housing and Community Affairs ("the Department") and the Commission on Landlord-Tenant Affairs (the "Commission"), received numerous communications from Rose A. Hoage (the "Respondent" or "Mrs. Hoage") and her husband and counsel, Donald L. Hoage ("Mr. Hoage"), over the course of these proceedings, in which they argued against the Commission hearing this case. The Commission's discussion of the procedural issues addressed herein is complicated by the fact that in the written communications, usually taking the form of letters, Mr. and Mrs. Hoage raised certain procedural and substantive issues over and over again. Further, Mr. Hoage, who appeared as counsel in the case, eventually withdrew his appearance, in part because he anticipated being a witness. Yet at times, after his withdrawal, he continued to act as an advocate for his wife and respondent Jessica K. Napper ("Ms. Napper"), his stepdaughter. It became unclear after his withdrawal what his precise role in the case was.

In any event, the Commission has set forth below a history of some of these communications in order to present in an orderly fashion the procedural issues raised by Mr. and/or Mrs. Hoage, and the Commission's rulings with respect to them.

History of Communications and Filings

When the case was first filed, in September, 2001, Mrs. Hoage was the sole named respondent. She is the sole person identified as "Landlord" in the Complainants' lease. (Commission Exhibit 1, p. 36).[1][1] Upon examination of the Department's licensing records by the staff of the Department, which it does as a matter of course after a complaint is filed, it was discovered that a 1992 deed on the land records in Montgomery County showed that Mrs. Hoage owned the subject property both in her own

name and as a trustee for Ms. Napper, then a minor, who, it was later learned, is her daughter by a prior marriage. (Commission's Exhibit 1, p. 17). The complaint was amended to reflect Mrs. Hoage's dual role as owner of the property, and, in addition, Ms. Napper was added as a party Respondent because her ownership interest in the property, if any, was unclear.

The Department, as is required by Section 29-41 of the County Code, attempted to set the matter for conciliation, and the date of October 17, 2001, was chosen for that purpose. (Commission's Exhibit 1, p. 24). Mrs. Hoage, who at that point was represented by her husband, who is an attorney licensed to practice law in Maryland, and, by his own admission, a former county attorney for Montgomery County, who, while in that position, was assigned to work with the Commission on Landlord and Tenant Affairs, refused to participate in conciliation absent the appearance of "all necessary witnesses." (Commission's Exhibit 1, pp. 26, 70, 105, 106). Mrs. Hoage claimed in a letter dated October 8, 2001, that the failure of witnesses to appear at the conciliation conference would deprive her of "the protections [she is] entitled to under our Constitution's 14th Amendment and Maryland's Declaration of Rights." (Commission's Exhibit 1, p. 26). Mrs. Hoage repeated this contention on numerous, later occasions.

In that same letter, Mrs. Hoage asked of the Department's Landlord-Tenant Administrator, Renee McLean, that the individual charged with investigating the complaint and conducting conciliation, Investigator Maria Edison, no longer be assigned to the case because, "Ms. Edison has treated me in a disparate way." (Commission's Exhibit 1, p. 26). In a follow-up letter dated October 17, 2001, Mr. Hoage reiterated Mrs. Hoage's position that absent the presence of "necessary witnesses" for cross-examination, Mrs. Hoage would not appear for conciliation. (Commission's Exhibit 1, p. 70). Mr. Hoage reiterated this position in another letter dated October 22, 2001. (Commission's Exhibit 1, p. 71). Based on Mrs. Hoage's repeated refusal to participate absent the appearance of witnesses a conciliation conference did not take place.

Thereafter, by letter dated December 17, 2001, Mr. Hoage accused the Department of violating his wife's rights, and threatened legal action against the County if the complaint filed against Mrs. Hoage was not dropped. (Commission's Exhibit 1, p. 82).

By further letter dated January 7, 2002, Mr. Hoage notified the Department that Mrs. Hoage had filed suit in the District Court for Montgomery County against two of the four complainants, John and Betty Crotty, for the tort of negligent representation, thereby inferring that the Department and the

Commission had no jurisdiction to proceed based on the District Court suit.[2][2] (Commission's Exhibit 1, pp. 105, 110, 116-117). Mr. Hoage also indicated, for the first time, that Mrs. Hoage intended to hire new counsel. (Commission's Exhibit 1, p. 106).

Despite these protestations by the Hoages, the Commission, at its meeting of January 8, 2002, voted to proceed with the case and to set a hearing thereon. Both Mr. and Mrs. Hoage and Ms. Napper were so notified by letter dated January 9, 2002. (Commission's Exhibit 1, p. 141). As is set forth in that letter, the hearing date was set for February 11, 2002.

On January 18, 2002, Mr. Hoage wrote the Commission and requested that the hearing date be postponed until April 15 or April 22, 2002, i.e. for at least three months. (Commission's Exhibit 1, pp. 140, 144). He also expressed an interest in participating in conciliation during the pendency of the continuance, and requested that Ms. Napper be deleted as a party to the proceeding. (Commission Exhibit 1, p 140).

By letter dated January 22, 2002, from the Commission to Mr. Hoage, his request for a continuance was denied for the reasons stated therein. (Commission's Exhibit 1, p. 145). He was advised in that letter that a motion could be filed to have Ms. Napper dismissed from the case or, alternatively, that the issue of whether she was properly a party to the case could be addressed at the hearing, and that any motion would need to be served on the Complainants. The Commission never received any such motion from the Hoages or from Ms. Napper.

By letter to the Commission, also dated January 22, 2002, Mr. Hoage withdrew his appearance as Mrs. Hoage's attorney, and again requested that the Commission grant her a continuance, and reiterated that Mrs. Hoage would have appeared for the conciliation conference on October 17, 2001, if "all necessary witnesses were there." (Commission's Exhibit 1, pp. 148-9). Just the next day, on January 23, 2002, Mr. Hoage, in a follow-up letter to the Commission, and despite his having already withdrawn his appearance, requested again that his appearance be withdrawn. (Commission's Exhibit 1, pp. 152-3). Despite having withdrawn his appearance, Mr. Hoage raised once again the issue of Ms. Napper's role in the proceeding, and reiterated again why Mrs. Hoage had not appeared for conciliation in October, 2001, i.e. because "all necessary witnesses" were not present. Once again, he requested a continuance on her behalf.

By letter dated January 29, 2002, the Commission advised Mr. Hoage that it had no objection to his withdrawal as counsel and advised him that the Commission was granting his wife's request for a continuance, and was continuing the hearing date until March 7, 2002, In that letter, the Commission once again advised Mr. Hoage that a motion could be filed prior to the hearing addressing the issue of whether Ms. Napper was properly a party to the case, and

such a motion would be considered by the Commission either upon receipt or at the hearing.

(Commission's Exhibit 1, p. 161). A formal notice of the continuance date was sent to Mrs. Hoage and Ms. Napper. (Commission's Exhibit 1, p. 163-164).

By letter dated January 27, 2002, Mrs. Hoage questioned the Commission's right to proceed with a hearing, claiming that the suit she filed in District Court against two of the complainants "took jurisdiction over the issue of the security deposits." (Commission Exhibit 1, p. 185). Thereafter, on January 29, 2002, Mrs. Hoage, through Mr. Hoage, filed a "Petition for Judicial Review" with the Circuit Court of this case, even though the Commission had not yet held a hearing or issued a decision. (See Exhibit A attached hereto). On February 20, 2002, Montgomery County filed a "Motion to Intervene" in the referenced Circuit Court case, and a "Motion to Dismiss" the Petition for Judicial Review, because there had been no final agency action in this case.

On February 5, 2002, Mrs. Hoage wrote to the Commission again, again challenging its jurisdiction, and advising it that she would not appear for the Commission hearing until after the Circuit Court and District Court hearings were held. (See Exhibit B attached hereto).

By letter dated February 15, 2002, the Commission advised Mrs. Hoage of its intent to proceed with the Commission hearing on March 7, 2002, and that if she failed to appear, she could be deemed to be in default. (Commission's Exhibit 1, p. 210).

On or about February 28, 2002, Mrs. Hoage filed a "Motion for Referral Back, to Dismiss, to Stay and Objection to Case File" with the Commission, in which she, among other things, re-raised many of

the issues already referenced above. (See Exhibit C attached hereto).[3][3] Then, on March 1, 2002, she moved in the Circuit Court to stay the Commission from proceeding to hearing. (See Exhibit D attached hereto).

On March 7, 2002, she filed a pleading in the Circuit Court entitled "Conditional Response to Montgomery County's Motion to Dismiss," wherein she, among other things, pleaded that the suit pending in the District Court involved two tort claims, i.e. negligent representation and "overt false representation," and provided a copy to the Commission. (See Exhibit E attached hereto). Mrs. Hoage's motion to stay the Commission from proceeding to hearing had not been granted by the Circuit Court as of the scheduled hearing date, and therefore, the Commission hearing went forward, as scheduled, on March 7, 2002.

Neither Mrs. Hoage, Ms. Napper, nor anyone else appeared on the Respondents' behalf at the March 7, 2002 hearing. Nonetheless, an evidentiary hearing was held and testimony from the Complainants and the Commission witnesses was taken for approximately two hours. The Commission's decision, based on that testimony and various exhibits presented at the hearing, or documents present in its record of which it takes judicial notice, is set forth in more detail below. At this time, however, the Commission wishes to address several of the reoccurring themes that appeared in the various above-referenced communications sent by, and pleadings filed by, Mr. and/or Mrs. Hoage in connection with this matter.

PROCEDURAL ISSUES

I. The Denial of Mrs. Hoage's Requests for Conciliation

As shown above, when conciliation was first scheduled, Mrs. Hoage refused to appear, because she wanted to call, and cross-examine witnesses. The purpose of conciliation, however, is not to hold an evidentiary hearing. It is an off-the-record meeting intended to see if the parties

can resolve their disputes. If a party fails to appear, then naturally, no resolution can occur.

Montgomery County Code Section 29-41 sets forth the Department's duty to attempt to

conciliate matters before a hearing is held.[4[4]] Subsection (a) states that the conciliation is to involve "interested parties." Subsection (b) provides that conciliation conferences are to be informal. It is provided in Subsection (c) that the Department's duty is met if either party fails to appear after ten days notice.

In this instance, Mrs. Hoage failed and refused to appear for the conciliation conference set by the Office for October 17, 2001. The various requests for conciliation filed by her and Mr. Hoage repeatedly made clear that they would only attend conciliation if witnesses would be compelled to be present, in effect, to turn the conciliation session into a contested, trial-type hearing, with the parties allowed to call and cross-examine witnesses. This is not, and never has been the point of conciliation, nor are such procedures provided for in connection with conciliation. Under the circumstances, the Department concluded that Mrs. Hoage had refused all reasonable efforts at conciliation. The Commission concurs with that conclusion and the Commission is satisfied that the Department's Director met her obligation under Code Section 29-41(c) with respect to trying to arrange for conciliation.

Despite Mrs. Hoage's proceeding in this manner, the Department did inquire of the Complainants as late as January, 2002, if they would be prepared to attempt conciliation. They said no. (Commission's Exhibit 1, p. 161). Under the circumstances, there was nothing that the Department or the Commission could, or was bound to do, to try to compel conciliation at that stage. Accordingly, the matter was set for hearing.

II. The Commission Has at All Times Had Jurisdiction to Hear and Decide This Matter.

Mrs. Hoage also contested the Commission's jurisdiction to proceed with a hearing, because of her District Court suit. In this matter, however, the Commission's jurisdiction is beyond dispute.

As evidenced from Mrs. Hoage's own pleadings, and record references referenced above, her claim in the District Court is in tort. (Commission Exhibit 1, pp. 116-117 and Exhibit E hereto). It is not premised on a breach of applicable landlord-tenant statutes or law. Further, the District Court suit is directed at only two of the Complainants herein, i.e., the Crottys. The

Finaus are not parties thereto. The Commission has no jurisdiction to hear tort claims such as those raised in the District Court suit. It is charged with addressing, primarily, statutory claims, such as the security deposit claims brought by the Complainants herein and certain contractual claims arising in connection with residential leases and the landlord-tenant relationship. Similarly, the District Court tort suit will not address whether the Respondent complied with County and State landlord-tenant law in withholding $716.38 from the Complainants' security deposit for the damages and monies claimed.

In short, the cause of action before the Commission is a completely different cause of action than that pursued by Mrs. Hoage in the District Court, and two of the Complainants here are not even party to the District Court action. The right of those two complainants to proceed cannot be claimed to be affected by the District Court action. While in some instances, the Commission's jurisdiction may be concurrent with the District Court's jurisdiction, and one body may defer to the other's jurisdiction, that is not a question which arises here.[5][5] Because there is no overlap whatsoever between the jurisdictions of both the Court and the Commission, the Commission has properly exercised jurisdiction over the complaint which is the subject of this action – a complaint for return of a security deposit. Furthermore, because the two cases are separate and distinct actions that seek different remedies, the District Court tort action in no way takes jurisdiction away from the Commission to hear the Complainants' complaint for return of their security deposit.

III. Whether Jessica K. Napper should remain as a party to this matter.

Both Mr. and Mrs. Hoage raised on several occasions the issue of whether Jessica K. Napper should be a party to these proceedings. Ms. Napper, herself, never filed any pleading or request to be dismissed on her own behalf, even after Mr. Hoage withdrew as counsel in the case. Nonetheless, for the reasons set forth below, the Commission has determined to dismiss her from the case.

CASE BACKGROUND

On September 14, 2001, Sione and Nadine Finau and John and Betty Crotty (collectively hereinafter referred to as the "Complainants"), former tenants, and lease signatories at 10803 Stella Court, 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 allege that Mrs. Hoage, owner of the Property assessed unjust damages, in the amount of $761.99, against their security deposit after the termination of their tenancy, in violation of § 8-203 (f)(1)(i) of the Real Property Article, Annotated Code of Maryland, 1999, as amended ("State Code").

Specifically, the Complainants asserted that: (1) on June 16, 2001, they issued proper written notice to the Respondent[6][6] of their intention to vacate the Property at the expiration of the lease extension, July 31, 2001; (2) their vacate notice was sent by certified mail and included both their forwarding address and a request to be present for a final walkthrough inspection of the Property, as required by Paragraph 23.b, "Move-Out Inspection/ Surrender of Premises," of the lease agreement; (3) at the final inspection, which occurred on August 2, 2001, the Respondent stated only that the gutters may need cleaning, and no inspection report or statement of any deficiencies was produced by the Respondent during or after the inspection; (4) they moved most of their personal belongings out of the Property on or about June 20, 2001, and at the time they formally vacated the Property, July 22, 2001, it had been cleaned and was not damaged in excess of ordinary wear and tear, as evidenced by the 72

photographs they submitted as part of their complaint; and (5) they dispute all of the charges assessed against their security deposit, including items that were pre-existing, as noted on the initial walkthrough inspection report created and signed by the parties at the beginning of their tenancy.

In response to the above-referenced allegations, the Respondent asserted in correspondence to the Department that: (1) the Complainants damaged the Property in excess of ordinary wear and tear during their tenancy, and all of the damage deductions made from the Complainants' security deposit are justifiable; (2) the charge for one-half month's rent (August 1-15, 2001) was based on the Complainants' refusal to allow them to show the Property to prospective tenants on July 17, 2001, which constituted a breach of the lease, and resulted in their inability to re-rent the Property until September 1, 2001; and (3) the Complainants are not due any additional refund from their security deposit.

On December 8, 2001, the Complainants amended their complaint to claim that the Respondent had no reasonable basis to withhold any portion of their security deposit, and therefore, pursuant to § 8-203 (e)(4) of the State Code, they were requesting an award of three times the amount of the sums withheld.

After determining that the complaint was not susceptible to conciliation, the Department duly referred this case to the Commission for its review, and on January 8, 2002, the Commission voted to hold a public hearing, which was scheduled for February 11, 2002. Notice of the hearing date and time was sent to the parties on January 9, 2002. However, the Respondent thereafter requested that the Commission's hearing be postponed to allow her time to secure new counsel. The Respondent's request for postponement was granted and a new hearing date was set for March 7, 2002. Proper notice of the new hearing date and time was sent to the Complainants and the Respondent. The public hearing in the matter of Finau, et al. v. Hoage, et al., relative to Case No. 11957, commenced on March 7, 2002, and concluded on that date. As noted above, the Respondent did not appear.

The Commission entered into the record of the public hearing the following six (6) exhibits offered by the Complainants: (1) a photocopy of the lease agreement between the Complainants and the Respondent, identified as Complainants' Exhibit No. 1 (Commission's Exhibit 1, pp. 36 to 43); (2) a series of 72 photographs of the Property taken by the Complainants, identified as Complainants' Exhibit No. 5 (Commission's Exhibit 1, pp. 2 to 14); (3) the initial walkthrough inspection report, identified as Complainants' Exhibit No. 6; (4) a letter from the Respondent to the Complainants dated July 17, 2001,

identified as Complainants' Exhibit No. 7 (Commission's Exhibit 1, p. 60); (5) a letter from the Respondent to the Complainants dated July 22, 2001, identified as Complainants' Exhibit No. 8 (Commission's Exhibit 1, p. 61); and (6) a handwritten letter from the Respondent to the Complainants dated August 13, 1999, identified as Complainants' Exhibit No. 9.

Also, the Commission entered into the record of the hearing the following three (3) exhibits identified by Commission witness Brian Gallahan, Service Manager, Acker & Sons, Inc.: (1) a photocopy of check #3874, dated October 7, 1999, identified as Complainants' Exhibit No. 2 (also see Commission's Exhibit 1, p. 56); (2) Acker & Sons, Inc. service log for October 7, 1999, identified as Complainants' Exhibits No. 3; and (3) a photocopy of Invoice #06266, dated October 7, 1999, identified as Complainants' Exhibit No. 4 (also see Commission's Exhibit 1, p. 80).

FINDINGS OF FACT

1. Rose A. Hoage is the owner of the Property. No evidence was presented to confirm that Jessica K. Napper has a fee interest in the Property or received any portion of the security deposit at any time.

2. On July 13, 1999, the Complainants and the Respondent entered into a one-year lease agreement (the "Lease") for the rental of the Property, which commenced on August 1, 1999, and expired on July 31, 2000. The rent for the Property was $995.00 a month.

3. In July, 1999, the Complainants paid the Respondent a security deposit in the amount of $1,990.00, which was paid in two (2) equal installments of $995.00, the first on July 6, 1999, and the second on July 13, 1999.

4. The Property was occupied by Sione and Nadine Finau, and their daughter Mele, during the entire duration of their tenancy. Complainants John and Betty Crotty are listed as leasehold tenants and co-security depositors. They never occupied the Property, however.

5. At the commencement of the tenancy, Complainant Nadine Finau inspected the Property and produced a handwritten list of existing damages, including, but not limited to, "Spots on carpet in basement office area, 5 little, 1 big." The list of existing damages was signed by Nadine Finau on July 30, 1999, and signed by the Respondent on August 10, 1999.

6. In June 2000, the Complainants and the Respondent executed a one-year renewal of the Lease, which commenced on August 1, 2000, and expired on July 31, 2001. The terms and conditions of the Lease Renewal remained the same as the initial Lease, including the amount of the monthly rent.

7. By a letter dated June 16, 2001, sent by certified mail and hand-delivery, the Complainants advised the Respondent that they would be vacating the Property by July 31, 2001, at the expiration of the Lease renewal. By the same letter, the Complainants also requested to be present for a final walkthrough inspection of the Property and provided the Respondent with their forwarding address: 12912 Dean Road, Silver Spring, MD 20906.

8. The Complainants finished cleaning the Property on Saturday, July 21, 2001, and returned the keys and possession of the Property to the Respondent on Sunday, July 22, 2001.

9. A final walkthrough inspection of the Property was conducted by the Respondent and Complainants, Sione Finau and John Crotty, on August 2, 2001. The Commission credits the testimony of Mr. Finau and Mr. Crotty that, at the time of the final inspection, the Respondent indicated that everything was okay with the Property.

10. The Commission finds that the Respondent had the opportunity during the final

walkthrough inspection to identify any damage in excess of ordinary wear and tear which may have been caused by the Complainants during their tenancy, but failed to do so.

11. The Complainants fully vacated the Property and returned the keys to the Respondent on July 22, 2001, having paid rent in full to the Respondent through July 31, 2001. The Complainants' tenancy and obligation to pay rent to the Respondent ceased as of July 31, 2001, and no additional rent is owed by the Complainants beyond that date.

12. At the time the Complainants vacated the Property, July 22, 2001, the house was left in a clean and sanitary condition and there was no evidence that Complainants had neglected or damaged the Property in any way.

13. The Commission finds, based on the testimony of the Complainants, and the photographs taken by the Complainants and entered into evidence as Complainants' Exhibit No. 5, that the Complainants left the Property in clean and sanitary condition when they vacated, and that there was no damage to the Property in excess of ordinary wear and tear.

14. By a letter dated August 30, 2001, within forty-five (45) days after the termination of the Complainants' tenancy, the Respondent issued them a statement of the cost reportedly incurred to repair and re-rent the Property, itemized as follows:

Security deposit:	$1,990.00
Interest:	169.81
Total:	$2,159.81
Damages:	
a. Cleaning of gutters	$ 35.00
b. Locksmith due to 7/17/01 lockout	62.50

c. Spot cleaner for coffee/drink stains in office	5.99
d. Plumbing expense to clear garbage disposal	113.00
e. ½ month's rent for breach of lease	497.50
f. Newspaper ads necessitated by 7/17/01 lockout	48.00
Total costs actually incurred:	$ 761.99
Amount of Refund:	$1,397.82

15. The Respondent refunded to the Complainants the balance of their security deposit, $1,397.82, on September 14, 2001, within forty-five (45) days after the termination of the Complainants' tenancy.

16. On or about January 22, 2002, the Respondent refunded to the Complainants the sum of $35.00, the amount initially withheld from their security deposit for gutter cleaning. Based on this additional refund, although it was not made timely, the Commission will not address the issue of whether the Respondent had any legal basis to withhold this sum initially.

17. Based on the Complainants return of the Property keys to the Respondent on July 22, 2001, the Respondent had no reasonable basis to withhold from their security deposit the cost incurred to replace the locks.

18. The Commission finds that the Respondent had no reasonable basis to withhold from the Complainants' security deposit a half month's rent for "breach of lease." No explanation was offered at the hearing for why that sum was withheld or what specific damage was incurred that justified that withholding. Furthermore, the Commission finds that no evidence was offered to indicate that the Complainants breached their lease during their tenancy.

19. Paragraph 19 of the Lease provides that a landlord may enter the property to show the property to prospective tenants "during normal business hours" and only "after due notice (24 hours)" to the tenant.

20. The Commission finds that at 6:30 PM on July, 17, 2001, the Respondent attempted to show the Property to prospective new tenants without having first provided the Complainants with proper advance notice of her intention to show the Property. The Commission further finds that 6:30 PM is not during normal business hours. Therefore, the Commission finds that the Complainants were within their right to deny the Respondent access to the Property at 6:30 PM on July 17, 2001, and in so doing the Complainants did not breach their lease.

21. The Com

2001, the Respondent had no reasonable basis to withhold money from the Complainants' security deposit for a locksmith to change the locks, and for the cost of a newspaper ad to advertise the Property for re-rental. Furthermore, the Respondent failed to provide the Complainants or the Commission with a copy of the invoice or paid receipt from the Washington Post newspaper to demonstrate that any such cost was actually incurred.

22. At the time the Complainants took possession of the Property, on or about July 17, 1999, there were numerous spots on the carpet in the basement office area as evidenced by the walkthrough inspection report created by the Complainants and signed by them and by the Respondent. The Commission finds that the stains on the basement carpet for which the Respondent withheld $5.99 to buy spot cleaner were present when the Complainants moved in. Therefore, the Respondent had no reasonable basis for withholding money from the Complainant's security deposit for carpet cleaning materials.

23. The Commission finds that the Respondent had no reasonable basis to withhold $113.00 from the Complainants' security deposit for a plumbing repair on October 7, 1999 because that charge was not the Complainants' responsibility. The Commission credits the testimony and evidence presented by Commission's witness, Brian Gallahan, that Acker & Sons, Inc. repaired the garbage disposal at the Respondent's personal residence, at 3316 Edgewood Road, Kensington, Maryland for the charge on $113.00 on October 7, 1999, and that Acker & Sons never made such a repair at the Property that the Complainant's occupied during the Complainants' tenancy. The Commission does not find credible the notation on the lower left of the check, that it relates to the Property which is the subject of these proceedings.

23. The Commission finds that the Respondent's attempt to charge the Complainants $113.00 for a plumbing repair to her own residence, rather than the Property rented to the Complainants, is unreasonable, egregious and in bad faith.

24. Regarding the amount of security deposit interest paid to the Complainants by the Respondent after the termination of their tenancy, the Commission finds that the Respondent overpaid. Interest on security deposits accrues at a rate of 4% simple, per annum, and the Complainants were tenants in the Property for two years. Therefore, the correct amount of accrued interest on the Complainants' security deposit is $159.20 ($1,990.00 x 4% = $79.60 per year x 2 years = $159.20). Thus, the Respondent overpaid the Complainants interest in the amount of $10.61 ($169.81 - $159.20 = $10.61).

25. The Commission finds that the back of the refund check sent from the Respondent to the Crottys on September 14, 2001 contained the following language, "Endorsement hereon constitutes a release re: security deposit plus interest." That check was endorsed by John Crotty and Betty Crotty. Sione and Nadine Finau did not endorse that check.

26. The Commission finds that this language on the back of the check is ambiguous, at best, and it does not specify whether the release was intended to cover the entire deposit, or the portion received. In addition, the Commission credits the testimony of John Crotty that there was no discussion whatsoever with the Respondent prior to receipt of the check regarding the release, or what issues were in dispute that might require a release. The Commission further finds that the Complainants were entitled to the full $1,397.82 returned to them in that check.

27. The Complainants fulfilled all of the obligations required of them by the Lease, including full payment of the rent through the termination of their tenancy (July 31, 2001), issuing proper notice of their intention to vacate, and maintaining the Property in a clean and sanitary condition through their tenancy. Their photographs evidence that the premises were left in a clean, orderly and undamaged condition.

28. The Commission finds that the Respondent had no reasonable basis to withhold any portion of the Complainants' security deposit for non-payment of rent, damage to the leased premises

in excess of ordinary wear and tear, or for breach of lease. The Commission also finds that the Respondent's withholding of funds for numerous items for which there was no justification evidences a pattern aimed at depriving Complainants of a portion of their security deposit without any basis or justification, in effect, in bad faith.

29. The Commission finds that the Respondent's actions in withholding sums from the Complainants' security deposit to which she had no entitlement were willful, unreasonable and in bad faith, and have caused a defective tenancy.

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, after the Lease between the Complainants and the Respondent was executed. However, the termination of the Complainants' tenancy and the Respondent's alleged violations of § 8-203 took place after October 1, 1999, and therefore, the Commission must apply the law as it existed after that date, and exists today, including the newly-enacted amendments.

2. The Commission also notes that Chapter 29, *Landlord-Tenant Relations,* of the County Code has been amended, and that the amendments became effective as of April 1, 2001, prior to the termination of the Complainants' tenancy and the Respondent's alleged violations of Chapter 29

of the County Code. Therefore, the Commission must apply Chapter 29 as it now exists, including the newly enacted amendments.

3. As there is no evidence that Jessica Napper has a fee interest in the Property, or personally benefited from the security deposit, she is dismissed from the case.

4. The "release" on the back of the check sent by the Respondent to the Crottys with a partial refund of their security deposit is invalid and does not release the Respondent as to the matters which are the subject of these proceedings, because the Complainants did not receive any consideration in exchange for the release since the Complainant's were entitled by law to all of money refunded to them in that check, the Finaus were not affected in any manner by the language on the check, and the language on the check is ambiguous.

5. The Respondent's assessment against the Complainants' security deposit of the costs of repairs that were never made at the subject property (plumbing) or for damage that was pre-existing (carpet stains), constitutes a violation of § 8-203(f)(1)(i), § 8-203(f)(2), and § 8-203(e)(4) of the State Code, and has caused a defective tenancy.

6. The Respondent's withholding of an amount equal to one-half month's rent from the Complainants' security deposit without justification, when no rent was due and no breach of lease had occurred, constitutes a violation of § 8-203(f)(1), § 8-203(f)(2),), and § 8-203(e)(4)of the State Code, and has caused a defective tenancy.

7. The Respondent's assessment against the Complainants' security deposit for costs that were not caused by a breach of lease by the Complainants (advertising and lock change) constitutes a violation of § 8-203(f)(1)(i), § 8-203(f)(2)), and § 8-203(e)(4) of the State Code, and has caused a defective tenancy.

8. The withholding of $716.38 from the Complainants' security deposit when no damages beyond normal wear and tear were caused to the Property by the Complainants, and no rent or damages were owed, violated § 8-203(f)(1) and (2) and § 8-203(e)(4) of the State Code.

9. The Respondent is subject to the penalty provision of § 8-203(e)(4) of the State Code because she, without a reasonable basis, under circumstances evidencing bad faith, and in violation of State and County landlord-tenant laws, withheld $716.38 ($1,990.00 security deposit + $159.20 interest, less $1,432.82 refunded = $716.38) from the Complainant's security deposit.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders the Respondent, Rose A. Hoage, to pay the Complainants **$2,149.14** which sum represents three times the amount that was improperly withheld from the Complainants' security deposit plus accrued interest.

The foregoing decision was concurred unanimously by Commissioner Tina Smith-Nelson, Commissioner Mattie Ligon, and Commissioner Roger Luchs, Panel Chairperson.

To comply with this Order, Respondent, Rose A. Hoage, 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 Complainants Sione and Nadine Finau and John and Betty Crotty, in the full amount of $2,149.14.

The Respondent, Rose A. Hoage, 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. Be advised that pursuant to Section 29-49 of the County Code, should the Respondent choose to appeal the Commission's Order, she must post a bond with the Circuit Court in the amount of the award ($2,149.14) if they seek a stay of enforcement of this Order.

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Roger Luchs, Panel Chairperson

Commission on Landlord-Tenant Affairs

Exhibit A

Exhibit B

Exhibit C

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Exhibit D

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Exhibit E

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[7][1] The Commission's Exhibit No. 1, introduced at the hearing in this case which took place on March 7, 2002, is the set of documents compiled by the Department during their investigation of this complaint, and documents submitted by the parties regarding this case. In each case heard by the Commission, such an exhibit is used, not necessarily as evidence, but so that documents therein may be introduced as evidence, when properly identified and authenticated. It allows all parties, and the Commission, to efficiently find and refer to various pertinent documents in the course of a proceeding. A few documents are not contained in Commission's Exhibit No. 1 here and, therefore, where pertinent to this decision, are attached hereto.

[8][2] That case is captioned Rose A. Hoage v. John and Betty Crotty, Case 601-0000922-202.

[9][3] Exhibits C, D and E all contained numerous attachments which are not included here as part of the Exhibits.

[10][4] Section 29-41 reads as follows:

29-41. Procedure when violation of Chapter or defective tenancy found.

(a) If the Director, after investigating a complaint, finds reasonable grounds to believe that a violation of this Chapter has occurred or a defective tenancy exists, the Director must attempt to conciliate the matter by initial conference and persuasion with all interested parties and their representatives.

(b) The initial conciliation conferences must be informal and confidential, and nothing said or done during the initial conferences may prejudice the rights of any party. The initial conciliation conference must occur within 30 days after the complaint is filed unless the Director finds good cause for delaying it.

(c) The Director's obligation to conciliate a complaint under this Section is satisfied if either party does not appear at a scheduled conference after receiving at least 10 days' notice.

[11][5] The Commission recognizes that, as damages in the District Court suit, Mrs. Hoage makes claim to a portion of the security deposit which she, in fact, has already retained. In that context, however, this is simply a measure of damages she claimed she suffered, rather than a forfeiture based on the State's security deposit law.

[12][6] The Respondent from this point forward refers only to Rose A. Hoage because, as was indicated above, Jessica K. Napper is dismissed from this proceeding.