Before the
Commission on Landlord-Tenant Affairs
Montgomery County , Maryland

In the Matter of: Stacy Tucker and Jonice Gray-Tucker Complainants vs. Judith Koenick Respondent	Case #: 12738 Rental Facility: 2226 Washington Avenue, #103 Silver Spring, Maryland Rental Facility License #: 21348

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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, 29-44 and 29-47 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 11th day of October, 2002, found, determined, and ordered, as follows:

BACKGROUND

On January 9, 2002, Stacy Tucker and Jonice Gray-Tucker (the "Complainants"), former tenants at 2226 Washington Avenue, Unit #103, Silver Spring, Maryland, (the "Condominium"), a licensed condominium rental facility at Rock Creek Gardens Condominiums 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 Judith Koenick (the "Respondent"), owner of the Condominium: (1) assessed improper and unjustified charges against their $2,000.00 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"); (2) failed to issue them an itemized list of damages together with a statement of the costs actually incurred to repair that damage within forty-five (45) days after the premature 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 Respondent has forfeited her right to withhold any portion of their security deposit plus accrued interest for damages; and (3) failed to refund any portion of their security deposit plus $120.00 accrued interest, other than the $200.00 the parties agreed upon for five (5) days rent, after the termination of their tenancy, in violation of § 8-203(e)(1) and (f)(1), (2) and (3) of State Code.

Specifically, the Complainants assert in their complaint that: (1) the Respondent agreed to the premature termination of their 2-year lease agreement contingent on their ability to secure a new tenant; (2) on September 9, 2001, they secured a new tenant who executed a one-year lease agreement with the Respondent commencing on October 6, 2001, at a monthly rent of $1,695.00; (3) they vacated the Condominium on September 21, 2001, after having the carpets professionally cleaned, and having paid September 2001 rent in full to the Respondent; (4) at the time they vacated the Condominium it was not damaged in excess of ordinary wear and tear as evidenced by two final inspections conducted with the Respondent, the first on September 24, 2001, and the second on October 1, 2001, after which they returned the Condominium keys and parking passes to the Respondent, and gave her their forwarding address and telephone number; (5) on November 20, 2001, they received a letter, dated November 6, 2001, and postmarked November 10, 2001, from the Respondent advising them of the new tenant's concern about a cat odor in the Condominium; (6) by a letter dated November 19, 2001, and postmarked November 21, 2001, forty-seven (47) days after the termination of their tenancy, the Respondent advised them that the estimated cost to repair or replace the damaged carpet was between $1,500.00 and $4,000.00; (7) by a letter dated November 26, 2001, and sent by certified mail, they advised the Respondent that they disputed the alleged damages, however, the Respondent refused to accept delivery of the letter; (8) by a letter dated December 9, 2001, the Respondent informed them that the carpet repair had been completed at a cost of $2,426.84; and (9) by a letter dated December 17, 2001, the Respondent sent them a revised statement of the cost incurred to repair the carpet in the total amount of $2,501.84.

In response to the above-referenced allegations, the Respondent contends that: (1) the

carpet was in excellent condition when the Complainants moved into the Condominium; (2) the Complainants' pets damaged the carpet in excess of ordinary wear and tear during their tenancy; and (3) she incurred actual expense, in the amount of $2,501.84, to replace the carpet and repair the damage to the floors, which exceeded the amount of the Complainants' security deposit plus accrued interest, and therefore, they are not entitled to a refund of any portion of their security deposit plus accrued interest.

By a letter dated March 7, 2002 (See page 49 of Commission's Exhibit No. 1), the Complainants amended their complaint to request, in addition to the full refund of the balance of their security deposit plus $120.00 accrued interest, three times that amount as a penalty based on the Respondent's "conduct, which we believe to be egregious." Therefore, the Complainants are seeking an Order from the Commission for the Respondent to refund $1,800.00 of their security deposit ($2,000.00 less $200.00 rent for the period October 1 – 5, 2001), plus accrued interest in the amount of $120.00, for a total of $1,920.00, plus three times that amount ($5,760.00) as a penalty, for a total award of $7,680.00.

After determining that the complaint was not susceptible to conciliation, the Department duly referred this case to the Commission for its review, and on May 14, 2002, the Commission voted to hold a public hearing on July 23, 2002. However, based on the Respondent's failure to accept certified mail notifying her of the hearing date and time, and the Department's inability to personally serve the Respondent with a Summons and Statement of Charges, the public hearing was postponed, and rescheduled for August 12, 2002.

The record reflects that the Department sent notice of the rescheduled hearing date and time and a Summons and Statement of Charges and Notice of Hearing to the Respondent, by first class and certified mail, return receipt requested, postage pre-paid, on July 8, 2002 (See pages 83 – 86 of Commission's Exhibit No. 1), however, the Respondent failed to accept the certified mail copies of the notices. The record further reflects that the Respondent was personally served with a Summons and Statement of Charges and Notice of Hearing by Theodore R. Mason, Process Server, Tracer, Inc., on July 10, 2002, at 8:14 PM (See Page 87 of Commission's Exhibit No. 1). The public hearing in the matter of Stacy and Jonice Tucker v. Judith Koenick, relative to Case No. 12738, commenced on August 12, 2002, 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 the Complainants, Stacy and Jonice Tucker. The Respondent, Judith Koenick, failed to appear at the public hearing and failed to send a representative or an attorney to appear on her behalf.

The Commission entered into the record of the hearing the case file compiled by the Department, identified as Commission's Exhibit No. 1.

On September 26, 2002, 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.

PROCEDURAL ISSUE

By a letter dated August 6, 2002, the Respondent requested that the public hearing in the matter of Case No. 12738 be postponed until after October 1, 2002, for the following reasons: (1) she would not be available on August 12, 2002; (2) one of her witnesses would be traveling most of the month of August; (3) she was having difficulty locating one of her witnesses; and (4) there are numerous religious observances during the month of September that she would be attending which required considerable preparation. By a letter dated August 7, 2002 (See pages 90 and 91 of Commission's Exhibit No. 1), the Commission acknowledged receipt of the Respondent's August 6, 2002 request for postponement of the public hearing, advised her that her request was denied, and that the public hearing in the matter of Stacy and Jonice Tucker v. Judith Koenick, relative to Case No. 12738, would take place on the rescheduled date of August 12, 2002, at 6:30 PM. The Commission also advised the Respondent that a complete copy of the case file had been sent to her by the Department on August 2, 2002.

In response to the Commission's denial of her request for postponement, by a letter dated August 11, 2002 (See page 98 of Commission's Exhibit No. 1), the day before the rescheduled hearing, the Respondent again requested that the hearing be postponed until after October 1, 2002. By a letter dated August 12, 2002 (See page 101 of Commission's Exhibit No. 1), the Commission acknowledged receipt of the Respondent's August 11, 2002 letter and request for postponement, and again advised her that her request was denied, and that the rescheduled public hearing would take place, as scheduled, on August 12, 2002, at 6:30 PM.

It is the Commission's position that the decision to deny the Respondent's requests for a postponement was proper for a number of reasons. One of the Respondent's reasons for requesting a postponement was her assertion that "I will not be available on August 12, 2002." Despite the fact that the Respondent was personally served with notice of the August 12, 2002 hearing on July 10, 2002, more than a month before the hearing, she nonetheless waited until

less than a week before the hearing to request a postponement and to state that she was unavailable. In addition to waiting almost a month to tell the Commission that she was not available, the Respondent gave no specific reason or explanation for why she was unavailable. The Respondent also claimed that one of her witnesses was unavailable and she was having trouble locating another witness. However, the Respondent failed to give the name or identification of these potential witnesses and failed to give any specific reasons for their unavailability. Furthermore, the Respondent never requested a subpoena for these witnesses. Finally, the Respondent claimed that "[t]here are numerous religious observances during the month of September that I will be attending and require considerable preparation." The Respondent failed to provide any explanation for why a religious observance in September had any bearing on her ability to attend a hearing on August 12, or why she had waited almost a month to request the postponement. The Respondent's second request for a postponement cited many of the same reasons in her August 6, 2002 request, and again failed to provide any details or explanations as to why any of her reasons prevented her attendance at a hearing on August 12, 2002. Furthermore, the hearing had already been rescheduled once before because the Respondent refused to accept certified mail containing notice of the first hearing. It is the Commission's position based on the above, that the Respondent failed to set out proper and satisfactory reasons for her request for a postponement of the hearing, and therefore her requests were properly denied.

FINDINGS OF FACT

Based on the testimony and evidence of record, the Commission makes the following findings of fact:

1. The Respondent is the owner of the Condominium, a licensed rental facility located at 2226 Washington Avenue, Unit #103, Silver Spring, Maryland.

2. On February 29, 2000, the Complainants signed a two-year lease agreement (the "Lease") with the Respondent for the rental of the Condominium, which commenced on March 1, 2000, and was scheduled to expire on February 28, 2002, at the monthly rent of $1,500.00.

3. On or about February 29, 2000, Complainants paid the Respondent a security deposit in the amount of $2,000.00, which is properly receipted in the Lease.

4. On or about August 15, 2001, the Complainants issued the Respondent a verbal notice of their intention to prematurely terminate the Lease and vacate the Condominium on or about October 1, 2001. The Respondent agreed to the Complainants' premature termination of the Lease, without penalty, if the Complainants could secure a new tenant to move into the Condominium immediately after they vacated.

5. Subsequent to issuing their notice to vacate to the Respondent, Complainants placed an advertisement for a new tenant in the Washington Post newspaper, and thereafter accepted applications from and interviewed three (3) prospective tenants. As a result of those interviews, the Complainants recommended William H. Grady to the Respondent to be the new tenant.

6. The Respondent subsequently met with Mr. Grady, at which time he signed a one-year lease agreement with the Respondent for the rental of the Condominium to commence immediately after the Complainants vacated.

7. The Commission finds that the Complainants cannot be considered to have abandoned the Condominium or to have violated the Lease because the Complainants and the Respondent reached a mutual agreement that the Complainants could prematurely terminate the Lease if the Complainants could secure a new tenant to move into the Condominium immediately after the Complainants vacated. The Commission finds that the Complainants did secure a new tenant, Mr. Grady, who was approved by the Respondent to lease the Condominium for a term to commence immediately after the Complainants vacated and for a term beyond that of the Complainants' initial Lease. Furthermore, the Complainants made an agreement with the Respondent to pay her rent up until the beginning of the new tenant's tenancy.

8. On or about September 15, 2001, the Respondent and the Complainants agreed that the Complainants would pay $200.00 for rent for the period of October 1 – 5, 2001, and that the $200.00 rent would be deducted from the Complainants' security deposit.

9. On September 20, 2001, the Complainants moved all their personal belongings from the Condominium.

10. On September 21, 2001, the Complainants had the carpet in the Condominium professionally steam cleaned, de-flead and de-ticked, in compliance with Paragraph 8, "Pets," of the Lease and Paragraphs 2 (handwritten and initialed) and 3 of the Lease Addendum.

11. On September 24, 2001, the Complainants and the Respondent conducted a walk-through inspection of the Condominium to determine if it had been damaged by the Complainants in excess of ordinary wear and tear during their tenancy. During the inspection, the Respondent made no mention of any cat odor. However, during that inspection, the Respondent noticed a circular, brown stain in the living room carpet. After that inspection, the Complainants removed that stain from the living room carpet.

12. Subsequently, the Complainants and the Respondent conducted a second walk-through inspection of the Condominium, which revealed that the circular, brown stain in the living room carpet had been removed. The Respondent made no mention of any cat odor during the second inspection or of any damage to the Condominium caused by the Complainants' tenancy in excess of ordinary wear and tear.

13. On October 5, 2001, the Complainants returned the Condominium keys and the parking passes to the Respondent.

14. The Commission credits the testimony of the Complainants that the Condominium was re-rented to William H. Grady on or about October 6, 2001.

15. The Complainants' tenancy and obligation to pay rent to the Respondent terminated as of midnight October 5, 2001.

16. Based on the Complainants' failure to pay the Respondent rent for the period October 1 – 5, 2001, they are liable to her for unpaid rent for that period. Pursuant to the pre-termination agreement between the Complainants and the Respondent, which the Respondent confirmed in writing on December 9, 2001 (See page 33 of Commission's Exhibit No. 1), the total amount of rent owed to the Respondent by the Complainants for the period October 1–5,

2001, is $200.00.

17. By a letter dated November 6, 2001, and postmarked November 10, 2001 (See pages 18 and 19 of Commission's Exhibit No. 1), the Respondent notified the Complainants that the new tenant, Mr. Grady, had complained to her about a cat odor in the Condominium. This letter did not contain a list of damages claimed, a statement of costs actually incurred, or any estimate of costs expected to be incurred.

18. By a letter dated November 19, 2001, and postmarked November 21, 2001 (See pages 20 and 21 of Commission's Exhibit No. 1), the Respondent advised the Complainants, in pertinent part, that, "The estimated cost to remove the cat odor and damage from the unit will require that the carpet be replaced in the dining room and the large lower level room. I have received two estimates for approximately $1500.00 to do this." The referenced letter further states, "I hope it will not be necessary to replace all of the carpeting, etc. with the necessary treatments. This could cost between an additional $3000.00 to $4000.00."

19. Based on the postmark of November 21, 2001 on the November 19, 2001 letter, the Commission finds that the Respondent did not send that letter to the Complainants within 45 days of the termination of their tenancy. The Commission further finds that although the letter contained some estimated costs, the letter did not contain a statement of costs actually incurred to repair damages alleged to have been caused in excess of ordinary wear and tear.

20. By a certified letter dated November 27, 2001 (See pages 22 to 27 of Commission's Exhibit No. 1), fifty-three (53) days after the termination of their tenancy, the Complainants advised the Respondent that they disputed the damage claim and advised her, in pertinent part, as follows:

> "…during the first week of October 2001, prior to ending our tenancy, you conducted a 'final walk-through' of the premises and completed a written evaluation of the premises. As you know, that written evaluation contained no mention or even a suggestion that there was a cat "odor" or other damage allegedly caused by our cats. At approximately the same time, we were informed, by you, that we would receive our security deposit back promptly, and we provided you with our new address. During the next few days, your new tenant, who owns a cat, moved into the unit."

21. By a letter dated December 9, 2001 (See page 33 of Commission's Exhibit No. 1), sixty-five (65) days after the termination of the Complainants' tenancy, the Respondent sent the Complainants a list of damages being assessed against their security deposit, itemized as follows:

Security Deposit:	$2,000.00
Interest :	$120.00
Total:	$2,120.00

Damages:

October 1–5, 2001 Rent	$200.00
Carpet Inspection/Analysis (Omega Chem-Dry)	$75.00
Cat Urine Restoration (Crown Care, Inc.)	$690.00
Carpet Replacement – (Bill's Carpet Fair)	$1,736.84
Total Damages:	$2,701.84

Amount Owed Landlord	$581.84

22. The Commission finds that the Respondent did not send the Complainants a written list of damages together with a statement of the cost actually incurred to repair that damage within 45 days after the termination of their tenancy.

23. The Commission credits the testimony of the Complainants at the hearing that the carpet in the Condominium was approximately 14 years old at the time they vacated. This finding is supported by a written statement provided to the Department by Francie Gilman (See page 55 of Commission's Exhibit No. 1), who lives at 2226 Washington Avenue, Unit #202, Silver Spring, MD, another condominium unit at Rock Creek Gardens Condominiums, which states:

> "I have lived at 2226 Washington since 1989. To my knowledge the carpet was never replaced, until this year. The tenant who lived in 103 when I moved in had two (possibly more) cats. He also had two large fish tanks, one on the upper level and one downstairs. He later married and adopted three children. When I visited I remember smelling cat urine."

24. The Commission finds that the life expectancy of carpet in a rental property, even if it were of the highest grade, is less than 14 years, and therefore, the replacement value of the carpet in the Condominium at the time the Complainants vacated was zero.

25. Based on the results of the two walk-through inspections, the age of the carpet in the Condominium, and the testimony of the Complainants at the hearing, the Commission finds that the Complainants did not cause damage to the carpet in the Condominium in excess of ordinary wear and tear, and are not responsible for the cost of repairing/replacing the carpet.

26. Although the Commission finds that the Respondent is not entitled to have withheld money from the Complainants' security deposit for the cost of repair and/or replacement of the carpet in the Condominium, the Commission does not find that the Respondent's actions in withholding those costs rose to the level of being egregious or demonstrating bad faith on the part of 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. Based on Complainants' early termination of their lease agreement with the Respondent, and based on the agreement of the Complainants and the Respondent that the Complainants would find the Respondent a new tenant and would pay rent up until the commencement of the new tenant's tenancy, and that the Respondent could deduct this rent payment from the Complainants' security deposit, the Respondent was within her right to withhold $200.00 from the Complainants' security deposit for rent for the period October 1, 2001 through October 5, 2001.

2. The Respondent's failure to send the Complainants a written list of damages together with a statement of the cost actually incurred within 45 days after the termination of the Complainants' tenancy constitutes a violation of § 8-203(g)(1) of the State Code, and has caused a defective tenancy. Therefore, pursuant to § 8-203(g)(2) of the State Code, the

Respondent has forfeited her right to withhold any part of the Complainants' security deposit for damages.

3. Based on the Commission's findings that: (a) the Complainants did not damage the carpet in excess of ordinary wear and tear and (b) the subject carpet was approximately 14 years old and had therefore exceeded its life expectancy, the Respondent's withholding of the balance of Complainants' security deposit, which sum is $1,800.00 ($2,000.00 security deposit, less $200.00 pro rata October 2001 rent) plus $120.00 in accrued interest, to repair and/or replace the carpet in the Condominium, constitutes a violation of § 8-203(f)(1) of the State Code, and has caused a defective tenancy.

4. The Complainants' amended complaint requests that the Commission award them, in addition to the refund of the balance of their security deposit plus accrued interest ($1,920.00), "treble damages" based on the "wrongful withholding" of that portion of their security deposit plus interest, and the "egregious" conduct of the Respondent. 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 Respondent's conduct in wrongfully withholding the Complainants' deposit, whether or not the Respondent acted in bad faith, and any prior history by the Respondent of wrongful withholding of security deposits. The Commission does not believe that the Respondent's actions rise to the level of egregiousness or bad faith that would warrant the awarding of a penalty. Therefore, the Complainants' request for a threefold penalty of the withheld amount of their security deposit is hereby DENIED.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby Orders the following:

1. The Respondent must pay the Complainants **$1,920.00**, which sum represents the Complainants' security deposit ($2,000.00) plus accrued interest ($120.00), less the amount properly withheld ($200 rent); and,

2. The Complainants' request for a threefold penalty of the withheld amount of their

security deposit plus accrued interest, is DENIED.

Commissioner Daryl Steinbraker, Commissioner Kwaku Ofori, and Commissioner Travis Nelson, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondent, Judith Koenick, 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 Stacy Tucker and Jonice Gray-Tucker, in the full amount of $1,920.00.

The Respondent, Judith Koenick, 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 Class A civil citation and $500.00 civil fine, 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 ($1,920.00) if she seeks a stay of enforcement of this Order.

Travis Nelson, Panel Chairperson
Commission on Landlord-Tenant Affairs