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

In the Matter of: Andrew and Gayle Nadler Complainant vs. Arthur and Patricia Hyder, and Marydale Realty Management, Inc. Mary Vaarwerk, President Respondents	Case #: 24538 Rental Facility: 6751 Surreywood Lane, Bethesda, Maryland Rental Facility License #: 14483

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 30th day of April, 2003, found, determined, and ordered, as follows:

BACKGROUND

On July 1, 2002, Andrew and Gayle Nadler (the "Complainants"), former tenants at 6751 Surreywood Lane, Bethesda, 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 Arthur and Patricia Hyder (the "Respondents"), owners of the Property, and Mary Vaarwerk, President, Marydale Realty Management, Inc., ("Respondents' Agent"), management agent for the Respondents: (1) failed to refund any portion of their $2,100.00 security deposit plus $126.00 accrued interest within forty-five (45) days after the termination of their tenancy, in violation of § 8-203(e)(4) of the Real Property Article, Annotated Code of Maryland, 1999, as amended ("State Code"); and (2) assessed unjust charges against their security deposit after the termination of their tenancy, in violation of § 8-203(f)(1) of the State Code.

By a letter dated November 22, 2002, the Complainants amended their original complaint to allege, in addition to complaints previously asserted, that the Respondents and/or Respondents' Agent: (1) improperly assessed against them the cost of certain plumbing repairs during their tenancy which were not their responsibility to correct, in the total amount of $399.00, in violation of Section 29-30(a)(3) of the County Code, and Executive Regulation No.102-92E; (2) in July 2001 issued them an improper notice of a $200.00 per month rent increase, in violation of Section 29-54 of the County Code; (3) failed to have the Property, including the carpets, properly cleaned at the commencement of their tenancy, in violation of Section 29-27(m) of the County Code, and that they incurred actual cost, in the amount of $309.91 to have the carpets professionally cleaned and $60.00 to have the Property cleaned; and (5) had no reasonable basis to withhold any portion of their $2,100.00 security deposit plus $126.00 accrued interest, which constitutes a violation of § 8-203(f)(4) of the State Code.

Specifically, the Complainants assert that: (1) they issued proper written notice to the Respondents' Agent of their intention to quit and vacate the Property on April 30, 2002, in compliance with the Lease and § 8-402(b)(1)(i) of the State Code and therefore, they owe no additional rent or late fees to the Respondents for May 2002 rent; (2) the Property was not damaged in excess of ordinary wear and tear at the time they vacated; (3) during their tenancy they were assessed and paid for three

(3) plumbing repairs that were the Respondents' obligation; (4) during their tenancy they were assessed an improper $200.00 per month rent increase which they paid for a total of ten (10) months (July 2001 through April 2002), totaling $2,000.00; and (5) based on the Respondents' failure to properly clean the carpets in the Property at the commencement of their tenancy, they incurred actual cost, in the amount of $309.91to have the carpets professionally cleaned.

The Complainants are seeking an Order from the Commission for the Respondents to: (1) refund their entire $2,100.00 security deposit plus $126.00 accrued interest; (2) reimburse them for the cost they incurred to have to Property cleaned, $60.00, and to clean the carpets, $309.91, at the commencement of their tenancy; (3) reimburse them for the amount they were assessed to make plumbing repairs to the Property, which sum is $399.00; (4) based on the improper notice of rent increase, refund the overpayment of rent they paid to the Respondents for ten (10) months, which sum is $2,000.00; and (5) based on the Respondents' unreasonable withholding of their entire security deposit plus accrued interest, the assessment of a threefold penalty of the withheld amount, which sum is $6,678.00, for a total award of $11,672.91.

The Respondents and/or Respondents' Agent assert that: (1) the Property was delivered to the Complainants at the commencement of their tenancy in a clean and sanitary condition, including the carpets; (2) during their tenancy, Complainants were only assessed the cost of plumbing repairs which were Complainants' responsibility; (3) the Complainants failed to issue proper written notice of their intention to vacate the Property as required by Paragraph 22a of the lease agreement, and therefore, the Complainants are liable for May 2002 rent in the amount of $2,200.00, plus a $110.00 late fee; and (4) the Property was damaged in excess of ordinary wear and tear by the Complainants, and they incurred actual expense to repair that damage, $25.00 to cut the grass and $15.00 to remove glue from the kitchen countertop.

After determining that the complaint was not susceptible to conciliation, the Department duly referred this case to the Commission for its review, and on December 11, 2002, the Commission voted to hold a public hearing on January 16, 2003. However, based on a timely request for continuance from Respondents' attorney, Nancy P. Regelin, the public hearing was postponed, and the public hearing in the matter of Andrew and Gayle Nadler v. Arthur and Patricia Hyder and Mary Vaarwerk, President, Marydale Realty Management, Inc., relative to Case No. 24538, commenced on February 24, 2003, and concluded on that date.

The Commission notes that Respondents' "Motion to Strike Improper Notice," which accompanied their request for continuance, was denied by the Commission on January 14, 2003.

The record reflects that the Complainants, Respondents and Respondents' Agent were given proper notice of the hearing date and time. Present at the hearing and presenting testimony and evidence were the Complainants, Andrew and Gayle Nadler, and Respondents' agent, Mary Vaarwerk, President, Marydale Realty Management, Inc. The Respondents and Respondents' Agent were represented at the hearing by Maryland attorney Nancy P. Regelin.

Also present at the hearing and providing testimony and evidence were: one witnesses called by the Commission, Gayle Cory, PMV Plumbing and Heating, Inc. ("PMV"); and one witness called by the Respondents, Lori Patterson, a former employee of Marydale Realty Management, Inc.

The Commission entered into the record of the hearing the case file compiled by the Department, identified as Commission's Exhibit No. 1. Prior to its admission, the Commission ruled in favor of Respondents' motion to remove from the case file any reference to settlement negotiations. The Commission also accepted into evidence a copy of the lease agreement between the Complainants and Respondents' Agent, dated June 5, 2000, identified as Commission's Exhibit No. 2.

Without objection, the Commission also accepted into evidence at the hearing the following exhibits offered by the Complainants: (1) a summary of the relief being sought from the Commission, identified as Complainants' Exhibit No. 1; (2) a series of invoices, an account statement and four (4) photographs of the Property, collectively identified as Complainants' Exhibit No. 2; (3) a series of invoices from PMV and several letters from Respondents' Agent, collectively identified as Complainants' Exhibit No. 3; (4) two invoices, two letters and four photographs of the Property, collectively identified as Complainants' Exhibit No. 4A; (5) a series of invoices, collectively identified as Complainants' Exhibit No. 4B; (6) correspondence between Complainants and Respondents' Agent, and several invoices from the *Washington Post* newspaper, collectively identified as Complainants' Exhibit No. 5; (7) an invoice from St. Rose Cleaning Service and copies of two Commission Orders, Case No. 11842, Maass-Moreno v. Decker, and Case No. 10609, Harris, et al. v. Ross, collectively identified as Complainants' Exhibit No. 6; and (8) a handwritten statement in Spanish from Rosario Alfaro, identified as Complainants' Exhibit No. 7.

At the hearing, the Commission also accepted into evidence the following documents offered by Respondents: (1) a Lease Extension Agreement, identified as Respondents' Exhibit No. 1; (2) a notice of rent increase, dated April 26, 2001, sent by Respondents' Agent to the Complainants, increasing the monthly rent from $2,000.00 to $2,200.00 a month, identified as Respondents' Exhibit No. 2; and (3) a Deed for the property located at 8818 Maxwell Drive, Potomac, Maryland 20854, identified as Respondents' Exhibit No. 3. The Commission notes that although these documents clearly fell within the ambit of a request for documents served on Respondents by the Department while investigating this matter (See Pages 17 and 18 of Commission's Exhibit No. 1), Respondents did not produce the requested documents until the night of the hearing. Noting the objection of Complainants to the introduction of these documents, based on Respondents failure to produce them prior to the hearing, the Commission marked these documents for identification but reserved ruling on the objection. In addition, without objection, the Commission accepted into evidence from the Respondents a series of 10 photographs of the Property, collectively identified as Respondents' Exhibit No. 4, and a letter, dated May 13, 2002, from Respondents' Agent to the Complainants, identified as Respondents' Exhibit No. 5.

Regarding Complainants' objection to the acceptance of Respondents' Exhibits 1 and 3 into evidence, the Commission finds that Complainants did receive copies of both Exhibits from Respondents, as indicated by the appearance of the Complainants' signatures on the Lease Extension Agreement, and that the Complainants did execute a Deed for the property on Maxwell Drive, as indicated by Complainants signatures. Accordingly, the Commission finds that Complainants were not prejudiced by Respondents' failure to provide these documents prior to this hearing and the documents are accepted into evidence as Respondents' Exhibits No 1. and No. 3, respectively.

The Commission notes its concern that Respondents' Agent failed to fully participate in the investigation of this matter by not providing requested documents to the Department prior to the hearing, as required by Section 29-5(c) of the County Code, and cautions Respondents and Respondents' Agent against such future tactics.

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. The Property is owned by the Respondents, Arthur and Patricia Hyder, and was managed throughout the Complainants' tenancy by Respondents' management agent, Mary Vaarwerk, President, Marydale Realty Management, Inc.

2. On June 5, 2000, the Complainants executed a one-year lease agreement (the "Lease") with the Respondents' Agent, for the rental of the Property, which commenced on July 1, 2000 and expired on June 30, 2001. The rent during the initial Lease term was $2,000.00 per month.

3. On or about June 5, 2000, the Complainants paid Respondents' Agent a security deposit of $2,100.00, which was properly receipted in the Lease by a separate Addendum.

4. Pursuant to the terms and conditions of the Lease, the Rent Due Date occurred "on the first day of each and every month" of Complainants' tenancy.

5. On May 26, 2000, prior to the commencement of the Complainants' tenancy, Respondents' Agent had the carpets in the Property professionally cleaned by American Associates at a cost of $185.39 (See receipt at page 45 of Commission's Exhibit No. 1).

6. The Commission finds that at the commencement of the Complainants' tenancy, the Respondents and/or Respondents' Agent delivered the Property, including the carpeting, to the Complainants, in a clean, habitable and satisfactory condition as required by Section 29-27(m) of the County Code and Paragraph 5a, "Acceptance of Property," of the Lease. The Commission further finds that the Complainants requested that Respondents' Agent have the carpets cleaned again, which Respondents' Agent declined to do, and therefore, Complainants had the carpeting in the Property re-cleaned on July 16, 2000, by Sears HomeCentral (See Invoice #028481 at second page of Complainants' Exhibit No. 4A), at a cost of $309.91. However, the Complainants failed to provide sufficient probative

or persuasive evidence or testimony to demonstrate that the Property, including the carpeting, was not adequately cleaned prior to their tenancy, and therefore, Complainants are not entitled to reimbursement for the cost they incurred to clean the Property ($60.00) or re-clean the carpeting ($309.91).

7. On July 7, 2000 and July 10, 2000, PMV Plumbing and Heating, Inc. ("PMV"), came to the Property to perform necessary plumbing work requested by the Complainants. The Complainants set up the appointments with PMV, and on both occasions Complainants were not at home to provide PMV access to the Property. On each occasion PMV waited outside of the Property for two (2) hours before leaving, and PMV charged this waiting time to Respondents' Agent. PMV ultimately completed the scheduled plumbing work on August 14, 2000, and billed Respondents' Agent a total of $744.47, consisting of $480.00 for labor and $264.47 for materials. Of the $480.00 charged for labor, $192.00 represented the time PMV spent waiting for the Complainants to provide access to the Property on July 7 and 10, 2000. Payment in full was made by Respondents' Agent to PMV by two separate checks, Check #12945 in the amount of $552.47, and Check #12946 in the amount of $192.00.

8. On August 22, 2000, Respondents' Agent assessed against Complainants' account $192.00 for the time PMV employees were unable to access the Property, and the Complainants subsequently paid this amount. The Commission finds that the Complainants were not improperly charged for a plumbing repair, but rather, they were assessed the actual cost that Respondents' Agent incurred because the Complainants, after setting up the appointments with PMV, were not present to allow access to the Property. Based on the Complainants' failure to allow access to PMV, the Commission finds that Respondents' Agent was within her rights to assess the amount of $192.00 against the Complainants, and therefore, Complainants are not entitled to reimbursement for this amount.

9. On August 20, 2000, PMV came to the Property to clear and flush an obstruction from the toilet waste line. PMV billed Respondents' Agent $162.75 for the work, consisting of $96.00 for labor, $66.75 for materials. Payment in full was made by Respondents' Agent by two separate checks, Check #12993 in the amount of $73.00 and Check #12994 in the amount of $89.75. On August 29, 2000, Respondents assessed against Complainants' account $73.00 for the cost of clearing the obstruction from the toilet waste line, and the Complainants subsequently paid this amount to Respondents. The Commission finds that the obstruction to the toilet waste line was caused by the Complainants, and pursuant to Paragraph 9 of the Lease, "Maintenance," they are responsible for the cost incurred by Respondents' Agent to correct the problem. Therefore, Respondents' Agent was within her rights to assess $73.00 against the Complainants to clear and flush an obstruction from the toilet waste line.

10. On November 10, 2000, Respondents' Agent assessed against the Complainants' account a late fee of $18.25, which represented 5% of an unpaid account balance of $365.00. The Commission finds that the $365.00 unpaid account balance consisted of a previously unpaid $100.00 late fee assessed against Complainants for late payment of August 2000 rent, the unpaid $192.00 plumbing bill (See Finding of Fact #8 above), and the other unpaid $73.00 plumbing bill (See Finding of Fact #9 above). Complainants paid the $18.25 late fee to Respondents' Agent on September 13, 2001 (See page 63B of Commission's Exhibit No. 1). The Commission further finds, as evidenced by the accounting printout for the Property (See page 63A of Commission's Exhibit No. 1), that each of the Complainants' monthly rental payments was first credited towards the most recent charge for rent, rather than for the payment of any other charges or any outstanding balance due. Since neither a previously unpaid late fee nor unpaid plumbing bills constitute non-payment of rent, the Respondents' Agent improperly assessed, and the Complainants subsequently paid, an improper $18.25 late fee to Respondents' Agent.

11. On or about April 26, 2001, Respondents' Agent sent the Complainants proper written notice of rent increase together with a "Lease Extension Agreement" increasing the monthly rent for the Property from $2,000 to $2,200, and extending the Lease beyond its June 30, 2001 termination deadline on a month-to-month basis as of July 1, 2001 (See Respondents' Exhibit Nos. 1 and 2). The Commission finds that the Complainants received both the notice of rent increase and the "Lease Extension Agreement" as evidenced by the Complainants' signatures on both documents, and considered together, these documents fully comply with Section 29-54(a), "Rent adjustments; notice requirements," of the County Code.

12. On February 22, 2001, PMV performed repair work on several bath basins in the Property, including replacing the cartridge to the master bath basin faucet that was installed on August 20, 2000, and installing a new basin faucet in the master bath and a new single lever handle in the upstairs bathroom.

13. On May 15, 2001, PMV came to the Property to check for a leak in the bathroom basin and to caulk around the bathroom faucets, and billed Respondents' Agent $134.00 for the work. Payment in full was made to PMV by Respondents by Check #12354. On June 22, 2001, Respondents' Agent assessed against the Complainants' account $134.00 for the cost of caulking around the bathroom faucets, and the Complainants subsequently paid this amount to Respondents' Agent. The Commission credits the testimony of Complainants that the caulking work performed by PMV was necessitated by

the repair work PMV completed to the basins of each bathroom on February 22, 2001, and was not general maintenance required to be performed by the Complainants. Therefore, the $134.00 assessed against the Complainants' account by Respondents' Agent is disallowed.

14. On April 1, 2002, Complainants hand-delivered to Respondents' Agent a proper written notice of their intention to vacate the Property by April 30, 2002, as required by Paragraph 22a, "Termination Hold-Over," of the Lease.

15. By letter dated April 2, 2002, Respondents' Agent acknowledged receipt of Complainants' notice to vacate and advised Complainants as follows: "As you are aware, your notice was not received in accordance of your lease agreement. You will be held responsible for the May rent unless a new tenant is secured and they take occupancy prior to the end of May."

16. The Complainants vacated the Property on April 29, 2002, having paid rent in full to Respondents for April 2002, and they returned the Property keys to Respondents' Agent on May 1, 2002. The Commission finds that the Complainants' tenancy and obligation to pay rent to the Respondents and/or Respondents' Agent ceased as of April 30, 2002.

17. On May 1, 2002, Respondents' Agent assessed against the Complainants account a charge of $2,200.00 for May 2002 rent, and on May 13, 2002, Respondents' Agent assessed against Complainants account a 5% late fee in the amount of $110.00 for late payment of May 2002 rent.

18. The Commission finds that prior to vacating the Property, the Complainants failed to cut the grass at the Property, and at the time they vacated, April 29, 2002, the grass was overgrown. This finding is supported by the series of photographs introduced at the hearing by Respondents' Agent (See Respondents' Exhibit No. 4), which she testified were taken on May 1, 2002, two days after the Complainants vacated, which show high grass and weeds at the Property, and by invoice from Ray Olund, Ray's Lawn Service (See invoice at page 41 of Commission's Exhibit No. 1), indicating that he cut the lawn at the Property on May 3, 2002, four days after the Complainants vacated, for which he charged $30.00 — $25.00 to cut the grass (normal price) and an extra $5.00 because the grass was tall. The Commission was not persuaded by Complainants' testimony or the photographic evidence they introduced at the hearing that the grass was not overgrown. (See photographs contained in Complainants' Exhibit No. 2). Based on Complainants failure to cut the grass before vacating the

Property, Respondents' Agent would have been within her right to assess against the Complainants' security deposit the actual cost incurred to cut the grass, which was $30.00. However, Respondents' Agent chose not to assess the full $30.00 cost against the Complainants' security deposit, but rather only $25.00. Therefore, the Commission finds that Respondents' Agent was within her rights to withhold $25.00 from the Complainants' security deposit for cutting the grass.

19. On May 20, 2002, St. Rose Cleaning Service cleaned the Property, including the removal of glue from a countertop, and specifically charged Respondents' Agent $15.00 to remove the glue. The Commission finds that the Complainants had an obligation to remove the glue from the countertop prior to vacating the Property, and based on their failure to do so, Respondents' Agent was within her rights to assess against the Complainants' security deposit the actual cost incurred to make that repair, which was $15.00.

20. On or about May 30, 2002, Respondents' Agent issued the Complainants an itemized list of damages, entitled "Close out of account statement," itemizing the following deductions made from Complainants' $2,100.00 security deposit plus $126.00 accrued interest:

May 2002 rent	$2,200.00	
May 2002 late fee		110.00
Cleaning		15.00
Yard Work		25.00
TOTAL	$2,350.00	

21. The Respondents and/or Respondents' Agent failed to refund any portion of the Complainants' security deposit or accrued interest within forty-five (45) days after the termination of the Complainants' tenancy.

22. The Commission finds that based on the Complainants' proper notice to vacate issued to Respondents' Agent, that the Complainants are not liable to the Respondents for May 2002 rent or late fee, and therefore, the assessment of $2,200.00 against the Complainants' security deposit for unpaid rent and the $110.00 late fee constitutes a violation of § 8-203 of the State Code, and 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. Pursuant to Section 29-27(m), "Contents of lease," of the County Code, and Paragraph 5a, "Acceptance of Property," of the Lease, Respondents were required to deliver the Property, including the carpeting, to the Complainants at the commencement of their tenancy "in a clean, habitable and sanitary condition," which they did. Therefore, Complainants' request for reimbursement of the $60.00 they incurred to clean the Property, and the $309.19 they incurred to have the carpeting re-cleaned approximately two weeks after they took possession, is denied.

2. The Respondents' Agent incurred actual expense, in the amount of $192.00, based on the Complainants' failure to allow access to the Property after scheduling appointments with PMV to make requested plumbing repairs to the Property, and the Respondents' Agent was within her rights to assess this extra charge against Complainants' account. Therefore, Complainants' request for reimbursement of the $192.00 they paid to Respondents' Agent for this charge, is denied.

3. The Respondents' Agent's assessment of $134.00 against Complainants' account for caulking bathroom faucets in one of the bathrooms, which the Complainants paid to the Respondents' Agent, was for a repair necessitated by plumbing work completed by PMV and authorized by Respondents, and not for damage caused by the Complainants. The Commission concludes that the assessment of this charge against the Complainants constitutes a violation of Section 29-30(a) of the County Code, and therefore, the Complainants are entitled to a full refund of the $134.00 they paid to Respondents' Agent for this repair.

4. Pursuant to Section 29-29(d), "Obligations of tenants," of the County Code, the Complainants were obligated to "properly use and operate all electrical and plumbing fixtures," and pursuant to Paragraph 9, "Maintenance," of the Lease, the Complainants were responsible "for any costs incurred for repairs or replacements made necessary due to abuse or negligent acts of commission or omission (including a failure to report a problem to Landlord/Agent in a timely manner) by the Tenant, his family, guests, employees, invitees or pets." Based on the Commission's finding that the Complainants caused an obstruction in the toilet waste line during

their tenancy, and that the Respondents' Agent incurred actual expense, in the amount of $73.00,

to remove the obstruction, the Commission concludes that the Respondents' Agent was within her right to assess this charge against Complainants' account.

5. Pursuant to § 8-208(d)(3)(i) of the State Code, a landlord can assess a late penalty against a tenant for late payment of rent not to exceed "5% of the amount of rent due for the rental period for which the payment was delinquent." Therefore, Respondents' Agent assessment of a $18.25 late fee against Complainants' account for a prior unpaid late fee and charges assessed for maintenance of the Property, which are not rent, constitutes a violation of § 8-208(d)(3) of the State Code, and is disallowed.

6. Paragraph 22a of the Lease, entitled "Termination – Hold Over," states that either party can terminate the Lease at the expiration of the Lease "by giving the other thirty (30) days' written notice of termination prior to the Rent Due Date." Pursuant to this Lease provision, in order to terminate their month-to-month tenancy at the end of April 2002, Complainants were required to provide Respondents' Agent written notice thirty (30) days before the Rent Due Date of May 1, 2002. Therefore, because thirty (30) days before May 1, 2002 was April 1, 2002, the Complainants served Respondents' Agent with a proper written notice on April 1, 2002 of their intention to vacate the Property as of April 30, 2002.

7. Based on the Complainants having provided Respondents' Agent with a proper notice to vacate, the Complainants' tenancy and obligation to pay rent ceased as of April 30, 2002, and Respondents are not entitled to charge against Complainants' security deposit $2,200.00 rent for May of 2002, or $110.00 for a late fee for May 2002.

8. Pursuant to Paragraph 9, "Maintenance," of the Lease, the Complainants were obligated to "keep grass and shrubbery trimmed and maintained." Based on the Commission's finding that the Complainants failed to cut the grass before vacating, the Respondents' Agent was within her right to assess the amount of $25.00 against the Complainants' security deposit to cut the grass.

9. Pursuant to Paragraph 13 of the Lease, entitled, "Alterations," the Complainants were not to have made any alterations to the Property without the prior written permission of the Landlord/Agent. However, without the consent of the Respondent or Respondents' Agent, the Complainants glued protective covers to corners of the countertop and failed to remove them or restore the countertop to the condition in which they found it at the commencement of their tenancy. After the termination of the Complainants' tenancy, the Respondents' Agent incurred actual expense, in the amount of $15.00 for "removal of glue from the countertop." Therefore, based on the Commission's finding that the Complainants damaged the Property in excess of ordinary wear and tear by affixing and not removing protective covers to corners of the countertop, the Respondents' Agent was within her rights to assess the cost of $15.00 against the Complainants' security deposit.

10. The Lease Extension Agreement and notice of rent increase issued to and received by the Complainants on April 26, 2001, was timely and contained all of the disclosures and information required by Section 29-54(a), "Rent adjustments; notice requirements," of the County Code. The Commission concluded that the April 26, 2001 notice of rent increase was proper and therefore, the Complainants' request for a refund of $200.00 a month rent for the period July 2001 through April 2002, is denied.

11. The Respondents and/or Respondents' Agent had no reasonable basis to withhold more than $40.00 from the Complainants' security deposit plus accrued interest after the termination of their tenancy.

12. The Commission concludes that the Respondents' withholding of $2,200.00 from the Complainants' security deposit for unpaid rent for May 2002 when no rent was due, and the assessment of a late fee of $110.00, was unreasonable, and 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' and Respondents' Agent's conduct in wrongfully withholding the Complainants' security deposit and whether or not the Respondents and/or Respondents' Agent acted in bad faith. Although the Respondents and/or Respondents' Agent had no reasonable basis to withhold May 2002 rent or a late fee from the Complainants' security deposit, the Commission concludes that their actions were not

egregious or in bad faith, as they thought that such deductions were appropriate and allowable. Therefore, the Complainants' request for a threefold penalty is hereby denied.

13. The Respondents' and Respondents' Agent's 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, and the assessment against the Complainants of improper maintenance costs, has caused a defective tenancy.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby Orders the Respondents and/or Respondents' Agent to pay the Complainants **$2,338.25**, which sum represents the Complainants' security deposit ($2,100.00) plus accrued interest ($126.00), plus a refund for bathroom caulking ($134.00), plus a refund of the improper late fee ($18.25), less the amount rightfully withheld from the security deposit ($40.00).

Commissioner Debra Wylie, Commissioner Jonathan Smith, and Commissioner Jeffrey Burritt, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondents, Arthur and Patricia Hyder and/or Respondents' Agent, Mary Vaarwerk, President, Marydale Realty Management, Inc., 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 Andrew and Gayle Nadler in the full amount of $2,338.25.

The Respondents, Arthur and Patricia Hyder and Respondents' Agent, Mary Vaarwerk, President Marydale Realty Management, Inc., 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 and/or Respondents' Agent 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 and/or Respondents' Agent choose to appeal the Commission's Order, they must post a bond with the Circuit Court in the amount of the award ($2,338.25) if they seek a stay of enforcement of this Order.

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Jeffrey Burritt, Panel Chairperson

Commission on Landlord-Tenant Affairs