

Before the

# Commission on Landlord-Tenant Affairs

for Montgomery County, Maryland

<b>In the Matter of</b>  Ana Marcela Montenegro  <b>Complainants</b>	
v.	<b>Case No. 25414</b>
Thaddeus Tadmowski  Rental Facility: 12201 Eagles Nest Court, Unit C, Germantown, MD (Unlicensed Rental Unit)  <b>Respondents</b>	

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**DECISION AND ORDER**

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland (the "Commission"), pursuant to Sections 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended ("County Code"), and the Commission having considered the testimony and evidence of record, it is therefore, this 22<sup>nd</sup> day of June, 2004, found, determined, and ordered as follows:

### **BACKGROUND**

On November 24, 2003, Ana Montenegro (the "Complainant"), former tenant at 12201 Eagles Nest Court, Unit C, Germantown, MD (the "Condominium"), an unlicensed condominium rental unit 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 she alleged that Thaddeus Tatkowski (the "Respondent"), owner of the Condominium: (1) assessed unjust damages against her \$2,200.00 security deposit plus accrued interest after the authorized premature termination of her tenancy, in violation of § 8-203(f)(1) of the Real Property Article, Annotated Code of Maryland, 1999, as amended ("State Code"); (2) failed to issue her an itemized list of damages together with a statement of the cost actually incurred to repair that damage within 45 days after the termination of her tenancy in violation of § 8-203(g)(1) of the State Code; and (3) failed to refund any portion of her \$2,200.00 security deposit after she vacated, in violation of § 8-203(e)(1) of the State Code.

Specifically, the Complainant asserts that: (1) shortly after moving to the Condominium, she noticed that the HVAC system and thermostat were not working properly and she reported this condition to the Respondent's agent; (2) in response to her request for repair of the HVAC system, she received correspondence from the Respondent's agent on June 4, 2003, advising her that the Respondent would prematurely release her from the lease without penalty if she wanted to move out; (3) by correspondence dated September 22, 2003, she informed the Respondent that she had accepted his offer and would vacate the Condominium as of September 30, 2003, which she did; and (4) by a letter dated October 14, 2003, the Respondent advised her that he was withholding \$90.00 from her security deposit for cleaning and minor damage to the Condominium, and that he would not be refunding the balance of her security deposit.

On February 10, 2004, the Complainant amended her complaint to request, based on the Respondent's unreasonable withholding of her entire security deposit, an order from the Commission for the Respondent to pay her, in addition to the refund of her entire security deposit, a three-fold

penalty of the withheld amount plus reasonable attorney's fees of \$1,000.00, pursuant to § 8-203(e)(4) of the State Code.

In response to the above-referenced allegations, the Respondent contends that: (1) he made every attempt to repair the HVAC system in the Condominium and sent several vendors to repair it; (2) he painted the walls and repaired the washer and dryer in the Condominium as the Complainant requested; (3) he replaced the thermostat to make it easier for the Complainant to operate it; (4) he replaced the HVAC unit after the Department's Division of Housing and Code Enforcement instructed him to do so, and after all the repairs were made, the Complainant was satisfied and did not move out; (5) he rescinded his offer to the Complainant that she could terminate the lease prematurely without penalty; (6) the Complainant breached the lease agreement by moving out of the Property prior to the expiration of the lease; and (7) the Complainant is responsible for lost rental income as a result of the early termination of the lease.

After determining that Case Nos. 25414 was not susceptible to conciliation, the Department duly referred this matter to the Commission for review, and on March 2, 2004, the Commission voted to accept jurisdiction and conduct a public hearing on April 21, 2004. The public hearing in the matter of Ana Marcela Montenegro v. Thaddeaus Tadkowski, relative to Case No. 25414 commenced on April 21, 2004, and concluded on that date.[\[1\]](#)

The record reflects that the Complainant and the Respondent were given proper notice of the hearing and date and time. Present and offering testimony and evidence were the Complainant, Ana Marcela Montenegro, the Respondent, Thaddeaus Tadkowski, and four witnesses he called to testify: the Department's Inspector, Richard Safreed; his management agent, Mr. Lee Otten; Detective Rod Stephens, Montgomery County Police Department, and Ms. Susan Poisson, Director, Lourie Center School. The Complainant was represented at the hearing by attorney Jeffrey D. Goldstein.

Noting the objection of Complainant's attorney, the Commission entered into the record of the hearing the case file compiled by the Department, identified as Commission's Exhibit No. 1, and without objection, the Commission entered into the record of the hearing a letter from the Complainant to the Respondent, dated June 2, 2003, identified as Commission's Exhibit No. 2. During the course of the hearing, the Commission accepted into evidence a variety of documents from both the Complainant and the Respondent.

Furthermore, the Commission extended the time period within which it would decide this matter pursuant to Section 7.1 of Appendix L, "Regulations on Commission on Landlord-Tenant Affairs," of the County Code.

### **FINDINGS OF FACT**

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

1. On February 27, 2003, the Complainant and the Respondent's Agent, Mr. Lee Otten, Rollin Meade Realty, entered into a one-year lease agreement (the "Lease") for the rental of the Condominium, which commenced on April 1, 2003, and expired on March 31, 2004, at the rental rate of \$1,100 per month. (Commission's Exhibit 1 at 29-38). The Complainant took occupancy of the Condominium on March 15, 2003, and paid the Respondent's Agent pro rata rent, in the amount of \$250.00 for the month of March. (Commission's Exhibit 1 at 3).

2. On or about March 10, 2003, the Complainant paid the Respondent's Agent a security deposit in the amount of \$2, 200.00, the equivalent of 2 months rent, which was properly receipted in the Lease. (Commission's Exhibit 1 at 39).

3. By a letter dated June 2, 2003, the Complainant notified Respondent's Agent that the HVAC system in the Condominium was still not working. (Commission's Exhibit 2).

4. By a letter dated June 4, 2003, Respondent's Agent acknowledged receipt of numerous complaints from the Complainant regarding the lack of air conditioning, and informed her, in pertinent part, that:

“Perhaps this home is not a good ‘fit’ for you to occupy and you could find a home to better suit your purpose. The owner has informed me he will not hold you to your lease, but will release you with no penalty should you want to relocate. He is not asking you to move, but will understand if you are not pleased with this property.” (Commission’s Exhibit 1 at 3).

5. On June 5, 2003, the Complainant filed a complaint with the Department’s Division of Housing and Code Enforcement regarding her non-working HVAC unit. (Commission’s Exhibit 1 at 42).

6. By a letter dated June 6, 2003, prior to the expiration of the Lease term, Respondent’s Agent issued the Complainant a notice to quit and vacate the Condominium by July 31, 2003. By the same letter, Respondent’s Agent also informed the Complainant that she was being charged \$50.00 for the cost to repair the dryer. (Commission’s Exhibit 1 at 44).

7. By a letter dated June 11, 2003, Respondent’s Agent advised the Complainant that the June 6, 2003, notice to vacate had been rescinded, and he reiterated the Respondent’s offer that the Complainant would be released from the Lease if she chose to vacate the Condominium. (Commission’s Exhibit 1 at 45).

8. On June 17, 2003, Inspector Safreed conducted an inspection of the Condominium, and on June 26, 2003, he issued the Respondent a Notice of Violation directing him to repair or replace the defective HVAC system within 30 days. (Commission’s Exhibit 1 at 47).

9. Subsequent to the issuance of the Notice of Violation, on or about July 3, 2003, the Respondent replaced the HVAC system at the Condominium.

10. On September 22, 2003, the Complainant sent a letter, dated September 23, 2003, to the Respondent and Respondent’s Agent advising them that she had accepted the Respondent’s June 4, 2003 offer to prematurely terminate the lease without penalty, and that she would be vacating the Condominium by September 30, 2003. Specifically, the Complainant stated in the letter that:

"I have finally found a place to move to as you suggested in your letter dated June 4, 2003. You also stated that you will not hold me to my lease and that the owner would release me with no penalty should I relocate. I will vacate by the end of September." (Commission's Exhibit 1 at 5).

11. By the same September 23, 2003 letter, the Complainant also requested the return of her security deposit and provided the Respondent and Respondent's Agent with her forwarding address. (Commission's Exhibit 1 at 5).

12. By a letter dated September 23, 2003, Respondent's Agent responded to the Complainant's notice to vacate and informed her that he was no longer managing the Condominium, and that:

"...the letter dated June 4, 2003 [authorizing the Complainant to prematurely terminate the Lease without penalty] must be rescinded. The lease is valid and should you choose to break the lease, you are responsible according to the law." (Commission's Exhibit 1 at 7).

13. By a letter dated September 23, 2003, the Respondent also responded to Complainant's September 23, 2003, notice to vacate, and advised her, in pertinent part, that:

"The June 4<sup>th</sup> letter you referred to in [sic] no longer binding since Montgomery County rescinded the letter because I spent 2975 dollars and installed a new air conditioning unit," and further, "**You are responsible for the rent.** I will not return the security deposit." (Commission's Exhibit 1 at 50).

14. The Complainant vacated the Condominium as of September 30, 2003, having paid rent in full to the Respondent through that date.

15. By a letter dated October 14, 2003, within 45 days after the termination of the Complainant's tenancy, the Respondent advised the Complainant that he was withholding \$90.00 from her security deposit for cleaning and minor damage to the Condominium. The Respondent further advised the Complainant that:

"The condo is currently up for sale or rent and if it is rented or sold before November 30<sup>th</sup> I will refund the remaining balance of the security deposit minus the clean up and replacement charges." (Commission's Exhibit 1 at 52).

The Respondent did not identify any other items of damage.

16. By a letter dated December 10, 2003 (Respondent's Exhibit 3), seventy-one (71) days after the termination of the Complainant's tenancy, the Respondent sent her a list of damages and unpaid rent being assessed against her security deposit, itemized as follows:

Security deposit	\$2,200.00
Six month interest @ 1% per year	<u>11.00</u>
Total	\$2,211.00

Less Expenses:

Dryer repair due to negligence	\$ 50.00
Oven cleaner	3.70

Light bulbs	5.14
Stove rings	20.36
Oven appliance bulb	4.97
Levlor shades	52.44
Carpet bedroom	624.36
Carpet bedroom	400.00
Pepco Oct. Electric	<u>5.77</u>
Total repair expenses	\$1,161.77
October rent	\$1,100.00
October rent late fee @5%	<u>55.00</u>
Total due	\$2,316.77
Less Security deposit	\$2,211.00
Balance due	105.77

17. The Complainant did not damage the Condominium in excess of ordinary wear and tear during her tenancy. Although the Commission subpoenaed from the Respondent any and all receipts or documentation of damages alleged to have been caused to the Condominium by the Complainant during her tenancy, the Respondent and Respondent's witnesses failed to provide any probative evidence or persuasive testimony that the Condominium was damaged by the Complainant in excess of ordinary wear and tear or that any costs were actually incurred to repair such damage.

18. The Respondent did not attempt to re-rent the Condominium after the Complainant vacated as of September 30, 2003. Although the Commission subpoenaed, from the Respondent, documentation regarding his attempts to re-rent the Condominium, the Respondent only provided several real estate listings showing that the Condominium was listed only for sale on October 6, 2003, but not for rent. (Commission's Exhibit 1 at 14-17).

19. The Respondent failed to credit the Complainant's security deposit with the correct amount of accrued interest, which sum is \$44.00.

20. The Complainant incurred attorney's fees in the amount of \$1,000.00 to pursue the refund of her security deposit plus accrued interest.

#### **CONCLUSIONS OF LAW**

Accordingly, based upon a fair consideration of the testimony and evidence contained in the record, the Commission on Landlord-Tenant Affairs concludes:

1. The fundamental issue in this case is whether or not the Complainant had the right to prematurely terminate her Lease with the Respondent without penalty. The Commission concludes that the Respondent's June 4, 2003, offer to the Complainant allowing her to terminate the Lease without penalty if she determined that it was "not a good fit," or if she was "not pleased" with the Condominium, was an unconditional offer that the Complainant could exercise within a reasonable time. If the Respondent wanted to condition the offer, such as requiring that the Complainant act on the offer within a specific time-frame or that Complainant accept the offer before Respondent installed a new air conditioning unit, he could have done so, but did not. The offer was unconditional and open-ended, and as a result, the Complainant was within her right to notify the Respondent, within a reasonable time, that she had decided to vacate the Condominium without penalty. We believe that the Complainant accepted the Respondent's offer within a reasonable time. It was only after the Complainant accepted the offer that the Respondent attempted to rescind it, which was too late. Therefore, the Commission finds that the Complainant's September 23, 2003, notice to vacate issued to the Respondent and Respondent's Agent advising them of her decision to vacate the Condominium by September 30, 2003, was a valid and proper notice.

2. Based on the Complainant having provided the Respondent with a proper notice to vacate, her tenancy ceased as of September 30, 2003, and as a result, she owes no additional rent to the Respondent beyond that date.

3. Pursuant to § 8-203 (f)(1)(i) of the State Code, “The security deposit, or any portion thereof, may be withheld for unpaid rent, damage due to breach of lease or for damage by the tenant or the tenant's family, agents, employees, guests or invitees in excess of ordinary wear and tear to the leased premises, common areas, major appliances, and furnishings owned by the landlord.” The Complainant did not damage the Condominium in excess of ordinary wear and tear during her tenancy and did not owe any rent to the Respondent after the termination of her tenancy. Therefore, the Respondent had no reasonable basis to withhold any portion of the Complainant’s security deposit for damages.

Furthermore, even if the Respondent had proven that the Complainant breached the Lease by prematurely terminating her tenancy and that he was therefore entitled to unpaid rent for the balance of the tenancy, the Respondent is entitled to nothing because he failed to mitigate his damages as required by § 8-207 of the State Code, “Duty of aggrieved party to mitigate damages on breach of lease; secondary liability of tenant for rent”. In Wilson v. Ruhl, 356 A.2d 544, 547

(Md. 1976), the court held that “...the listing of the property for sale did not satisfy the duty to mitigate damages, but that the listing of the property for sale or rent...did satisfy that duty”. In this case, the Respondent listed the Condominium for sale only, and not for rent. Thus, the Respondent failed to satisfy his obligation to mitigate the Complainant’s damages.

4. The Respondent, without a reasonable basis, failed to return any portion of the Complainant’s security deposit, plus accrued interest, within 45 days after the termination of her tenancy, when no damage had been caused to the Property by the Complainants during her tenancy, which constitutes a violation of § 8-203(f)(1) and (4) of the State Code, and has caused a defective tenancy.

5. The Respondent’s failure to refund to the Complainant interest which had accrued on her security deposit constitutes a violation of § 8-203(e)(1) of the State Code, and has caused a defective tenancy. Pursuant to § 8-203(e)(1) and (2) of the State Code, simple interest accrues on a security

deposit at the rate of 4% per year, at six-month intervals of 2%. Based on the duration of the Complainant's tenancy, 6 months (March 15, 2003 through September 30, 2003), the correct amount of accrued interest is \$44.00 (\$2,200.00 security deposit x 2% interest = \$44.00), not \$11.00 as calculated by the Respondent.

6. Pursuant to § 8-203(g)(1) of the State Code and Paragraph 3 of the Lease entitled, "Security Deposit", the Respondent had 45 days from the termination of the Complainant's tenancy, by November 14, 2003, to inform her of any damages or unpaid rent that he was claiming against her security deposit. The Respondent's notice of damages, dated October 14, 2003, which was within the statutory time-frame, claimed only minor damages, in the amount of \$90.00, being assessed against the security deposit. However, on December 10, 2003, seventy-one (71) days after the termination of the Complainant's tenancy and well after the expiration of the timeframe for doing so, the Respondent attempted to claim substantial additional damages, totaling \$1,161.77, against the Complainant. Therefore, pursuant to § 8-203 (g)(2) of the State Code, the Respondent forfeited his right to withhold any portion of the Complainant's security deposit for damages, other than the \$90.00 claimed in the letter of October 14, 2003. Furthermore, based on the Commission's finding that the Complainant did not damage the Condominium in excess of ordinary wear and tear, any claim of damage is without merit, unsupported and disallowed.

7. In order to award a penalty of up to three times the unreasonably withheld amount plus reasonable attorney's fees as requested by the Complainant pursuant to § 8-203(e)(4) of the State Code, the Commission must consider the egregiousness of the Respondent's conduct in wrongfully withholding the Complainant's security deposit, whether the Respondent acted in good faith, and any prior history by the Respondent of wrongful withholding of security deposits, pursuant to Section 29-47(b)(7) of the County Code.

The Commission concludes that the Respondent's withdrawal of the offer to unconditionally release the Complainant from her lease without penalty, only after the Complainant accepted the offer, was an action in bad faith and an egregious attempt to deny the Complainant the rightful return of her security deposit plus accrued interest. Therefore, the

Commission has determined that in addition to the full refund of her security deposit (\$2,200.00) plus accrued interest (\$44.00), the Complainant is entitled to a one-fold penalty of the unreasonably withheld amount of her security deposit plus accrued interest, which sum is \$2,244.00. In addition, the Commission also concludes, pursuant to § 8-203(e)(4) of the State Code, that the Complainant is entitled

to an award of attorney's fees. The Commission determines that an award of \$1,000.00 for attorney's fees is reasonable.

8. The Respondent's failure to properly handle and dispose of the Complainant's security deposit plus accrued interest in accordance with § 8-203 of the State Code, has caused a defective tenancy.

### **ORDER**

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders the Respondent to pay the Complainant **\$5,488.00**, which sum represents the Complainant's security deposit (\$2,200.00), accrued interest (\$44.00), a one-fold penalty of \$2,244.00, and reasonable attorney's fees in the amount of \$1,000.00.

Commissioner Mattie Ligon, Commissioner Christopher Toven, and Commissioner Lyana Palmer, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondent, Thaddeus Tadmowski, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4<sup>th</sup> Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order, a check made payable to Ana Marcella Montenegro, in the full amount of \$5,488.00.

The Respondent, Thaddeus Tadmowski, 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, he must post a bond with the Circuit Court in the amount of the award (\$5,488.00) if he seeks a stay of enforcement of this Order.

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Lyana Palmer, Panel Chairperson

Commission on Landlord-Tenant Affairs

[1] The Commission did not consider documents offered by the Respondent on April 22, 2004, because the record had closed by that time.