

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

In the matter of:

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Dennis McCune

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Complainant

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V.

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Case No. 25694

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Harold H. Huggins and Jeanne A. Huggins,

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Trustees of the Harold H. Huggins Revocable Trust, and

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Jeanne A. Huggins and Harold H. Huggins

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Trustees of the Jeanne A. Huggins Revocable Trust, and

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Harold H. Huggins, Harold H. Huggins Realty, Inc.

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Respondents

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Rental Facility: 10509 Parkwood Drive, Kensington, MD (Rental Facility License #5572)

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 11th day of February, 2005, found, determined, and ordered as follows:

BACKGROUND

On June 21, 2004, Dennis McCune (the "Complainant"), former tenant at 10509 Parkwood Drive, 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"), Case No. 25694, in which he alleged that Harold H. Huggins and Jeanne A. Huggins, Trustees of the Harold H. Huggins Revocable Trust, and Jeanne A. Huggins and Harold H. Huggins, Trustees of the Jeanne A. Huggins Revocable Trust, owners of the Property, and Harold H. Huggins, Harold H. Huggins Realty, Inc., (hereinafter collectively referred to as "Respondents"): (1) assessed unjust charges, in the amount of \$952.28, against his \$2,700.00 security deposit, after the termination of his tenancy, in violation of § 8-203(f)(1) of the Real Property Article, Annotated Code of Maryland, 1999 as amended ("State Code"); and (2) without a reasonable basis failed to refund \$952.28 of his security deposit within 45 days after the termination of his tenancy, in violation of § 8-203(e)(4) of the State Code, and therefore, he is entitled to a penalty of three times that amount, which sum is \$2,856.84.

Complainant asserts that: (1) he did not damage the Property in excess of ordinary wear and tear; (2) the Respondents assessed charges against his security deposit for damages that were not his responsibility to repair or that he did not cause; and (3) the Respondents charged him for damages to the Property that were either not repaired or for which no cost was actually incurred within 45 days after the termination of his tenancy.

The Respondents contend that: (1) the Complainant damaged the Property in excess of ordinary wear and tear during his tenancy; (2) they incurred actual expense to repair those damages; (3) the repairs were completed or ordered within 45 days after the termination of the Complainant's tenancy.

The Complainant is seeking an Order from the Commission that the Respondents refund the withheld portion of his security deposit (\$952.28) plus threefold the withheld amount (\$2,856.84) as he believes that this withholding was unreasonable and malicious.

After determining that Case No. 25694 was not susceptible to conciliation, the Department referred this matter to the Commission for review, and on September 14, 2004, the Commission voted to conduct a public hearing on October 25, 2004. However, by a letter dated September 27, 2004, Respondent Harold H. Huggins, requested that the hearing be continued to a date after November 15, 2004. The Commission granted Respondents' request and continued the hearing for November 16, 2004.

The public hearing in the matter of Dennis McCune v. Harold H. Huggins and Jeanne A. Huggins, Trustees of the Harold H. Huggins Revocable Trust, and Jeanne A. Huggins and Harold H. Huggins, Trustees of the Jeanne A. Huggins Revocable Trust, and Harold H. Huggins, Harold H. Huggins Realty, Inc., commenced on November 16, 2004. At the commencement of the hearing, Respondents' attorney, Kevin I. Kane, objected stating that the proper Respondents had not been identified or properly summoned to the hearing. Based on Mr. Kane's objection, the Commission determined to postpone the hearing until such time as it could identify and summons the owners of record for the subject Property. At the request of the Commission, Respondents' attorney agreed to provide accurate information identifying the correct ownership entity for the Property within ten days of the hearing, but failed to do so.

Based on records obtained from the Maryland State Department of Assessments and Taxation, the Commission has determined that the Property is owned by Harold H. Huggins and Jeanne A. Huggins, Trustees of the Harold H. Huggins Revocable Trust, and Jeanne A. Huggins and Harold H. Huggins, Trustees of the Jeanne A. Huggins Revocable Trust.

The public hearing in the matter of Dennis McCune v. Harold H. Huggins and Jeanne A. Huggins, Trustees of the Harold H. Huggins Revocable Trust, and Jeanne A. Huggins and Harold H. Huggins, Trustees of the Jeanne A. Huggins Revocable Trust, and Harold H. Huggins, Harold H. Huggins Realty, Inc., reconvened on January 18, 2005 and concluded on that date.

However, the Commission determined to leave the record of these proceedings open for 10 days, until January 29, 2005, to allow the Respondents an opportunity to submit copies of canceled checks, front and back, showing the dates payments for repairs charged against the Complainant's security deposit were made, as requested by the Commission. The Respondents provided the requested bank records on January 25, 2005, and the record of this hearing closed on that date.

The record reflects that the Complainant and the Respondents were given proper notice of the hearing and date and time. Present and offering evidence were the Complainant, Dennis McCune, and Respondent, Harold H. Huggins, Trustee, Harold H. Huggins Revocable Trust and Jeanne A. Huggins Revocable Trust on behalf of himself. Respondent Jeanne A. Huggins failed to appear at the hearing. The Respondents were represented at the hearing by attorney Kevin I. Kane.

Without objection, the Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1. Also without objection, the Commission entered into the record the following exhibits offered by the Complainant a series of five photographs of the Property reportedly taken between the Summer of 2003 and the Fall of 2004, identified as Complainant's Exhibit Nos. 1 to 5. The Commission also admitted into evidence the following exhibits offered by the Respondents: (1) a letter from the Complainant to Respondent Harold H. Huggins, dated March 13, 2003 listing defects at the Property, identified as Respondents' Exhibit No 1; (2) a series of photographs reportedly representing the condition of the Property at the time the Complainant moved into the Property, identified as Respondents' Exhibit No. 2; (3) photographs of the damaged countertops, identified as Respondents' Exhibit No. 3; and (4) a photograph of the shrubbery at the Property, identified as Respondents' Exhibit No. 4. Noting the objection of the Complainant, the Commission also accepted into evidence a photograph of the yard reportedly taken in the Spring of 2004, identified as Respondents' Exhibit No. 5.

On January 25, 2005, Respondent Harold H. Huggins provided to the Commission the following documentation requested at the hearing on January 25, 2005: (1) a photocopy of both sides of check #10843, dated February 3, 2004, in the amount of \$131.70, payable to Blaine Window Repair Service, identified as Respondents' Exhibit No. 6; (2) a photocopy of both sides of check #10998, dated May 24, 2004, in the amount of \$96.94, payable to Advanta Bank Corp., identified as Respondents' Exhibit No. 7; (3) a photocopy of both sides of check #11025, dated June 10, 2004, in the amount of \$350.00, payable to Maryland Lawn and Maintenance Service, and a paid invoice, identified as Respondents' Exhibit No. 8; (4) a photocopy of both sides of check #11136, dated August 12, 2004, in the amount of \$213.64, payable to US Vinyl Corporation, identified as Respondents' Exhibit No. 9; and (5) an invoice marked PAID from

Kitchen and Bath Distributors, Inc., in the amount of \$331.25, dated September 28, 2004, identified as Respondents' Exhibit No. 10.

FINDINGS OF FACT

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

1. On February 26, 2003, the Complainant and Respondent Harold H. Huggins, Harold H. Huggins Realty, Inc., signed a three-year lease agreement (the "Lease") for the rental of the Property, which commenced on March 1, 2003, and was due to expire on February 28, 2006.

2. On February 26, 2003, the Complainant paid Respondents a security deposit, in the amount of \$2,700.00, which was properly receipted in the Lease and an addendum to the Lease.

3. The Complainant vacated the Property on March 31, 2004, having paid rent in full through that date.

4. On April 1, 2004, the Complainant and Respondent Harold H. Huggins, Harold H. Huggins Realty, Inc., executed a Mutual Release, prematurely terminating the Complainant's tenancy effective March 31, 2004.

5. By a letter dated May 3, 2004, within 45 days after the termination of the Complainant's tenancy, Respondent Harold H. Huggins, Harold H. Huggins Realty, Inc., sent to the Complainant a list of charges being assessed against his security deposit itemized as follows:

Security Deposit posted on 2/03	\$2,700.00
Interest earned at 4% per annum	<u>108.00</u>

\$2,808.00

Minus:

Replaced kitchen sink countertop due to burn marks	\$ 325.00
Replaced storm window and window panes due to pellet holes	\$ 213.64
Weeded flower beds and mowed grass	\$ 185.00
Replaced broken front door storm panels	\$ 131.70
Replaced missing under cabinet toaster oven in kitchen	\$ 96.94

6. By the same May 3, 2004 letter, Respondent Harold H. Huggins, Harold H. Huggins Realty, Inc., also issued to the Complainant a check in the amount of \$1,855.72, which represented the balance of the Complainant's security deposit plus accrued interest.

7. The Commission finds that the Complainant damaged the kitchen countertop in the Property during his tenancy, and that the damage was in excess of ordinary wear and tear. This finding is supported by the credible testimony of Respondent Harold H. Huggins and the photographic evidence he presented (Respondents' Exhibit No. 3). However, the Commission further finds that the Respondents failed to repair or replace the kitchen countertop, or incur any actual expense until September 30, 2004 (See Respondents' Exhibit No. 9), six months after the termination of the Complainant's tenancy. Furthermore, the Commission credits the undisputed testimony of the Complainant that, "The countertop was not installed within the 45 day window. The countertops were installed when the property was sold, sometime later in the year; I don't have the exact date of that." Based on the above, the Commission disallows the charge of \$325.00 assessed against the Complainant's security deposit by the Respondents for the replacement of the kitchen countertop.

8. The Commission finds that the Complainant did not damage the storm windows or storm door glass in the Property at any time during his tenancy. This finding is supported by the credible testimony of the Complainant that he experienced several incidents of vandalism to

the Property in late December 2003, when an unknown person fired pellets through some storm windows and storm door glass. The Commission further credits Complainant's testimony that he reported these incidents to the Montgomery County Police Department and to Respondent Harold H. Huggins. Furthermore, the Commission credits the testimony of the Department's

Investigator, Rosie McCray-Moody, who testified that on July 20, 2004, she interviewed Montgomery County Police Officer D. K. Cohen, who stated that: (a) the Complainant did file a police report in late December 2003 regarding several incidents of vandalism at the Property; (b) he remembered coming out and investigating the complaint and said that there had been a rash of vandalism incidents in the Kensington area during that time-period; and (c) he was sure that the pellet holes in the storm windows and the storm door panel were acts of vandalism. The Commission finds that damage which is the direct result of vandalism by unknown parties is not the responsibility of the Complainant. Therefore, the charges for replacing the storm windows (\$213.64) and the broken storm door panels (\$131.70) assessed against the Complainant's security deposit are disallowed.

9. The Commission finds that the Complainant mowed the grass, weeded the flower beds, trimmed and otherwise properly maintained the bushes and shrubbery at the Property during his tenancy. The Commission does not find credible the testimony of Respondent Harold H. Huggins that the bushes and shrubbery at the Property were overgrown at the time the Complainant's tenancy terminated, March 31, 2004. The Commission's finding is further supported by the photographs introduced by Respondent Harold H. Huggins (See Respondents' Exhibits Nos. 4 and 5) which appear to show that they were taken during full foliage, which occurs much later than March 31st when the Complainant's tenancy terminated. Furthermore, the landscaping work was performed on April 28, 2004 (See Respondents' Exhibit No. 8), at a cost of \$185.00, but the bill was not paid, and no cost was actually incurred by the Respondents, until June 10, 2004, over 72 days after the termination of the Complainant's tenancy. Therefore, the \$185.00 assessed against the Complainant's security deposit to weed flower beds, mow the grass and trim overgrown bushes and shrubs, is disallowed.

10. At the hearing, Respondents' attorney withdrew the charge of \$96.94 assessed by the Respondents against the security deposit to replace a missing under cabinet toaster oven in the kitchen. Therefore, the Commission disallows the charge of \$96.94 assessed against the Complainant's security deposit for replacement of the toaster oven.

11. The Respondents, without a reasonable basis, withheld \$952.28 from the Complainant's security deposit after the termination of his tenancy, in violation of § 8-203(e)(4) of the State Code.

12. The Respondents' failure to handle and dispose of the Complainant's security deposit in accordance with the requirements of § 8-203, "Security Deposits," of the State Code, and Paragraph 3, "Security Deposit," of the Lease, 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 § 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." Except for the damages referred to at Findings of Fact No. 7 above, the Complainant did not damage the Property in excess of ordinary wear and tear during his tenancy.

2. Pursuant to § 8-203 (g)(1) and (2) of the State Code, "If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under subsection (f)(1) of this section together with a statement of the cost actually incurred (Emphasis added), and "If the landlord fails to comply with this requirement, he forfeits the right to withhold any part of the security deposit for damages." Although the Commission found that the Complainant damaged the countertop in the kitchen of the Property during his tenancy, the Respondents did not incur actual costs to repair the damage until 6 months after the Complainant had vacated the Property. Furthermore, based on the timing of the countertop replacement, September 30, 2004, it may have been replaced in preparation for the sale of the Property. Therefore, the Respondents had no reasonable basis to withhold \$952.27 of the Complainant's security deposit for damages.

3. The Commission concludes that the Respondents' withholding of \$952.28 from the Complainant's security deposit was unreasonable and a violation of § 8-203(e)(4) of the State Code. However, to award a penalty, as requested by the Complainant, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Respondents' conduct in wrongfully withholding part of the Complainant's security deposit and whether or not the Respondents acted in bad faith. Although the Respondents had no reasonable

basis to withhold \$952.28 from the Complainants' security deposit, the Commission finds that the Respondents' actions do not rise to the level of egregiousness and bad faith necessary to award a penalty, and therefore, Complainant's request for such an award is denied

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondents must pay the Complainant **\$952.28**, which is the amount wrongfully withheld from the Complainant's security deposit.

Commissioner Lyana Palmer, Commissioner Jay Krampf, and Commissioner Tim Gillespie, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondents, Harold H. Huggins and Jeanne A. Huggins, Trustees of the Harold H. Huggins Revocable Trust, and Jeanne A. Huggins and Harold H. Huggins, Trustees of the Jeanne A. Huggins Revocable Trust, and Harold H. Huggins, Harold H.

Huggins Realty, 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 Dennis McCune, in the full amount of \$952.28.

The Respondents, Harold H. Huggins and Jeanne A. Huggins, Trustees of the Harold H. Huggins Revocable Trust, and Jeanne A. Huggins and Harold H. Huggins, Trustees of the Jeanne A. Huggins Revocable Trust, and Harold H. Huggins, Harold H. Huggins Realty, 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 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 pursuant to Section 29-48(c) of the County Code.

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 choose to appeal the Commission's Order, they must post a bond with the Circuit Court in the amount of the award (\$952.28) if they seek a stay of enforcement of this Order.

Tim Gillespie, Panel Chair

Commission on Landlord-Tenant Affairs