

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

In the matter of:	*	
	*	
Gary and Ella Masters	*	
	*	
Complainants	*	*
	*	
V.	*	Case No. 25885
	*	
Dr. Lakshmi Mishra	*	
	*	
Respondent	*	

Rental Facility: 15224 Apricot Lane, N. Potomac, MD (Rental License No. 540)

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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 13th day of October, 2005, found, determined and ordered, as follows:

BACKGROUND

On October 15, 2004, Gary and Ella Masters, (“Complainants”), former tenants at 15224 Apricot Lane, N. Potomac, Maryland, (“Property”), filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs, (the “Department”), in which they alleged that their former landlord, Dr. Lakshmi Mishra (the “Respondent”), owner of the Property, assessed unjust charges against their \$1,300.00 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”).

The Respondent contends that: (1) the Complainants damaged the Property in excess of ordinary wear and tear during their tenancy; and (2) he incurred actual expense to repair that damage after the termination of the Complainants' tenancy.

After determining that the complaint was not susceptible to conciliation, the Department referred this case to the Commission for its review, and on May 3, 2005, the Commission voted to schedule a public hearing for June 28, 2005.

At the commencement of the hearing, the Complainants amended their original complaint and stated that they are seeking an Order from the Commission for the Respondent to refund \$1,300.00 withheld from their security deposit for repairs made to the rear yard and lawn of the Property.

The public hearing in the matter of Gary and Ella Masters v. Dr. Lakshmi Mishra, relative to Case No. 25885, commenced on June 28, 2005, 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 evidence were the Complainants, Gary Masters and Ella Masters, and the Respondent, Dr. Lakshmi Mishra, and two witnesses called by Dr. Mishra to testify, his son, Gyan Mishra, and landscape contractor Romeo A. Castro.

Without objection, the Commission entered into the record of the hearing the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Commission also accepted into evidence the following exhibits offered by the Respondent: (1) correspondence to the Commission dated June 27, 2005, identified as Respondent's Exhibit No. 1; and (2) four (4) photographs of the rear lawn, identified as Respondent's Exhibit Nos. 2 to 5. The Commission also accepted into evidence two (2) exhibits offered by the Complainants: (1) an 11 page, undated statement to the Commission from the Complainants with seven (7) attached photographs and two pages of e-mails between the Respondent and the Complainants, identified as Complainants' Exhibit No. 1; and (2) an envelope addressed to the Complainants, identified as Complainants' Exhibit No. 2.

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 evidence of record, the Commission makes the following findings of fact:

- (g). In basement for some reason all telephone jacks were pulled off the wall. All those were replaced with new & basement entertainment center was broken. That was also repaired. \$ 690.00

TOTAL \$5,569.00

12. The Respondent testified that she did not enter into a written contract with S&Y General Contractor, Inc., that she paid the contractor in cash, and that she did not have any paid receipts for the work performed.

13. The Commission finds that the Complainant did not damage the kitchen tiles in excess of ordinary wear and tear during her tenancy. This finding is supported by the cr

1. The Respondent was the owner of the Property, which was a licensed, single-family rental facility located at 15224 Apricot Lane, N. Potomac, Maryland, during the Complainants' tenancy.

2. On March 20, 2000, the Complainants signed a one-year and 11 day lease agreement with the Respondent (the "Initial Lease") for the rental of the Property, which commenced on March 20, 2000, and expired on March 31, 2001. At the commencement of the Lease, the Complainants paid pro-rata rent, in the amount of \$578.76, to the Respondent for the period March 20 – 31, 2000.

3. At the commencement of the Initial Lease the Complainants paid the Respondent a security deposit in the amount of \$2,000.00.

4. Paragraph 18 of the Lease, entitled "General Maintenance," subsections (a) and (b) state: "Tenant will, at his own expense: a) keep in good condition any lawn, vines shrubbery and keep any fences and walks in good repair, natural wear and tear expected; b) remove leaves and other debris that accumulates on the property."

5. At the commencement of the Lease, the Respondent provided the Complainants with a list of instructions regarding the condition of the Property at the time the Complainants vacated, including the following: "Grass must be well cut, bushes must be well trimmed and yard clean."

6. At the expiration of the Initial Lease, the Complainants and the Respondent signed a series of lease renewals, the last of which was to expire on July 31, 2004. All other terms and conditions of the Lease, with the exception of rent increases, remained the same.

7. By a letter dated May 22, 2004, the Complainants issued to the Respondent a proper written notice of their intention to quit and vacate the Property at the expiration of the last renewal lease, July 31, 2004, and also requested to be present for a final walkthrough inspection of the Property.

8. On July 31, 2004, the Complainants vacated the Property, and on that date participated in a final walkthrough inspection of the Property with the Respondent. The Respondent did not create a list of any deficiencies or damages to the Property at the time of the final walkthrough inspection

9. By a letter dated August 3, 2004, the Respondent advised the Complainants regarding the results of the final walkthrough inspection of the Property conducted on July 31, 2004, which identified three areas of concern: (A) a trash can full of trash and 10 trash bags left outside of the garage; (B) a broken knob on the community bathtub; and (C) food left in the refrigerator and freezer. There is no mention in this letter of the condition of the yard or lawns.

10. By a letter dated September 7, 2004, within 45 days after the termination of the Complainants' tenancy, the Respondent sent them a list of damages being claimed against their security deposit, itemized as follows:

A.	Replacement of the bathroom tub faucet knob and master bedroom Bath shower head (\$20 + \$25)	\$	45.00
B.	Pick up trash (12 trash bags and a large trash can filled with trash) Left in the garage and clean up of the refrigerator		50.00
C.	Cleaning of the weeds, wild growth of plants, ivy in the back yard extending up to 20 feet from back fence, cleaning of the growth around the side fences and around the trees		1,300.00
D.	Water bill		<u>34.26</u>
	Total	\$	1,429.26
	Security deposit of \$2,000.00 plus 4% interest per year from 20 March 2000 to 30 July 2004 (four years and four months) of \$320.00	\$	2,320.00
	Balance refunded	\$	890.74

10. The Respondent's September 7, 2004, notification included a refund check in the amount of \$890.74, together with the following statement:

"We have not charged you for cleaning the filth and trash from the garage (\$600.00 estimate) cleaning of the weeds and wild plants from the front flower beds (\$400.00 estimate) and black marks left by the rugs on the front and back porch that could not be removed even with muramic acid (\$100.00 estimate); a total of \$1100.00. We did this work ourselves."

11. The Respondent's September 7, 2004, notification also included a proposal from Castro Landscaping for \$1,300.00, to perform the following work: "Clearing his back yard so he can see his fence, cleaning and weeding all of the weeds, plus taking away all the poison ivy and some trash to the dump."

12. The Respondent gave no prior written notice to Complainants of any objections to the appearance of the rear yard, in spite of multiple lease extensions. Paragraph 34, subparagraph two of the Lease, entitled "RENEWAL," states, in pertinent part: "All renewal consideration shall be determined after a specific inspection to be completed no later that sixty (60) days prior to the lease expiration."

13. The Commission finds that the Complainants did not damage the rear yard or lawn at the Property during their tenancy. The Commission further finds that the Complainants properly maintained the yards and grounds of the Property during their tenancy in accordance with Lease addendum dated February 10, 2000, which required that, "Grass must be well cut, bushes must be well trimmed and yard clean." These findings are supported by the credible testimony of both the Complainants and Respondent's witness, landscape contractor Romeo Castro, that rear yard area cleaned out by the landscaper contained bushes and ground cover that were present of long duration, possibly 10 to 15 years. The Respondent failed to provide any evidence that the Complainants planted the bushes and ground cover or damaged the yard in any way. Therefore, the Respondent's assessment of \$1,300.00 against the Complainants' security deposit for landscaping work is disallowed.

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. Respondent assessed against the Complainants' security deposit the cost to repair damage to the yard and lawn at the Property, in the amount of \$1,300.00, that was not in excess of ordinary wear and tear, which constitutes a violation of § 8-203(f)(1) of the State Code; and,
2. 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 created a defective tenancy.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders the Respondent to pay the Complainants **\$1,300.00**, which sum represents the amount improperly withheld from the Complainants' security deposit.

Commissioner Suzanne Glazer, Commissioner Martha McClelland, and Commissioner Jay Krampf, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondent, Dr. Lakshmi Mishra, 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 Gary and Ella Masters, in the full amount of \$1,300.00.

Respondent, Dr. Lakshmi Mishra, 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 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 (\$1,300.00) if he seeks a stay of enforcement of this Order.

Jay Krampf, Panel Chairperson
Commission on Landlord-Tenant Affairs