

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

In the matter of:

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Denise Baer

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Complainant

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V.

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Case No. 26326

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William H. Clark, Trustee

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William H. Clark Trust

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Respondent

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Rental Facility: 6405 Camrose Terrace, Bethesda, MD 20817 (Rental Facility License #14577)

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 26th day of January, 2006, found, determined, and ordered as follows:

BACKGROUND

On June 27, 2005, Denise Baer ("Complainant"), former tenant at 6405 Camrose Terrace, Bethesda, Maryland, ("Property"), a licensed, single-family rental facility in Montgomery County, Maryland, filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs ("Department"), in which she alleged that William H. Clark, Trustee for the William H. Clark Trust ("Respondent"), and Douglas Clark, the Respondent's son and his Agent (the "Agent"): (1) failed to send her an itemized list of damages together with a statement of costs actually incurred to repair that damage, by first class mail within 45 days after the termination of her tenancy, in violation of § 8-203(g)(1) of the Real Property Article, Annotated Code of Maryland, 1999, as amended ("State Code"); (2) failed to return one-half of May 2005 rent, in violation of the Lease Addendum dated April 29, 2005; (3) failed to notify her of the date and time for the final walk-through inspection of the Property, as required by § 8-203(f)(1) of the State Code; and (4) charged her for damage to the Property that she did not cause or was not her responsibility to repair, in violation of Section 29-30(a) of the Montgomery County Code, 2001, as amended (the "County Code").

The Respondent contends that: (1) he had the itemized list of damages hand-delivered to the Complainant's current address before the 45-day deadline had expired; (2) the Complainant did not move out of the Property on May 15, 2005, nor did he agree to refund one-half of May 2005 rent to her if she did so; and (3) he charged the Complainant for damage she caused to the Property that was in excess of ordinary wear and tear.

The Complainant is seeking an Order from the Commission that the Respondent refund her entire security deposit (\$1,975.00) plus accrued interest in the amount of \$108.63, and one-half of May 2005 rent, in the amount of \$987.50. In addition, the Complainant asserts that the Respondent's withholding of her entire security deposit plus accrued interest was unreasonable, egregious and in bad faith, and therefore she is seeking a penalty of up to three times the withheld amount of her security deposit plus accrued interest.

After determining that Case No. 26326 was not susceptible to conciliation, the Department referred this matter to the Commission for review, and on September 6, 2005, the Commission voted to conduct a public hearing on November 16, 2005.

The public hearing in the matter of Denise Baer v. William H. Clark, Trustee, William H. Clark Trust, commenced on November 16, 2005, and concluded on that date. The Commission determined to leave the record of these proceedings open until November 28, 2005, to allow the Respondent an opportunity to submit copies of receipts in support of the charges against the Complainant's security deposit, and until December 8, 2005, for the Complainant to respond to the Respondent's submissions.

The record reflects that the Complainant and the Respondent were given proper notice of the hearing and date and time. Present at the hearing and offering evidence were the Complainant, Denise Baer, and one witness she called to testify, her daughter Demelza Baer-Bositis, and the Respondent, William H. Clark, Trustee, William H. Clark Trust, and one witness he called to testify, his son and agent Douglas Clark.

The Commission notes that the Respondent, William H. Clark, is elderly and was somewhat unresponsive to questions by the Commission, and each question had to be repeated several times before he answered. As a result, the Respondent's son and agent, Douglas Clark, requested that he be allowed to speak on behalf of his father especially in light of the fact that he had conducted all the business transactions with the Complainant and had first-hand knowledge and information regarding the Property, whereas his father, William H. Clark, had no first hand knowledge regarding the issues in the complaint. Commissioner Jeffrey Burritt then asked the Complainant if she had any objection to Douglas Clark presenting testimony and asking questions on behalf of his father. The Complainant advised the Commission that she did not object, and stated that Douglas Clark was the only person she had ever spoken with regarding her tenancy and she was unaware that Douglas Clark was not the owner of the Property until after she filed her complaint. The Commission acknowledged on the record that Douglas Clark is not an attorney and that he was not representing his father, William H. Clark, or the William H. Clark Trust, as their legal representative.

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 nine exhibits offered by the Complainant, identified as Complainant's Exhibit Nos. 1 to 9, and six exhibits offered by the Respondent, identified at Respondent's Exhibit Nos. 1 to 6.

The Commission determined to leave the record of these proceedings open for ten (10) days, until November 28, 2005, to allow the Respondent an opportunity to provide additional evidence. On November 25, 2005, while the record of these proceedings remained open, the Respondent submitted four (4) items, identified as Respondent's Exhibit Nos. 7-10. On December 5, 2005, in response to the post-hearing submission, the Complainant submitted a 31-page response, identified as Complainant's Exhibit No. 10, and the record closed on that date.

FINDINGS OF FACT

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

1. On September 12, 2003, the Complainant and Douglas Clark, agent for the Respondent ("Agent"), signed a 2-year lease agreement (the "Lease") for the rental of the Property, which commenced on October 1, 2003, and was due to expire on September 30, 2005.
2. On September 12, 2003, the Complainant paid the Agent a security deposit, in the amount of \$1,975.00, which amount was receipted in the Lease.
3. By a letter dated March 8, 2004, sent by certified mail, the Complainant provided the Agent with a list of needed repairs to the Property, which identified, among other issues, that "the basement floods and the flooding appears to be caused from a drainage ditch in the back."
4. By a letter dated March 19, 2004, the Complainant provided the Agent with a revised list of items in the Property that needed to be repaired, and advised the Agent that in December 2003, the basement had flooded after a sudden intense rain, and as a result, she purchased a wet-dry vacuum to clean the rugs and she replaced her bed and sofa that were in the basement. The Complainant again requested that structural repairs be made to the Property so that there would be no recurrence of the basement flooding.

5. On April 29, 2005, the Complainant signed a Lease Addendum (“Lease Addendum”) with the Respondent’s Agent which provided, in pertinent part, that:

“This addendum provides that no rent will be expected or paid for the month of May, 2005 in consideration of repair issues, loss of work and damage to property for 6405 Camrose Terrace experienced by Denise Baer up to and including April 30, 2005, associated with flooding of the basement. Denise Baer will accept this in full and amicable satisfaction of any claims up to and including that date. Subsequent rent will be due as provided in the original lease. This addendum further provides for early termination of the lease with no penalties on behalf of the tenant, Denise Baer for early termination. All other provisions of the lease remain in effect as originally agreed to with the following exceptions:

The date of termination will be agreed upon mutually between the parties with the following parameters:

- The tenant, Denise Baer, will seek to move at the earliest opportunity, preferably prior to June 1, 2005. She will make active efforts to locate housing as soon as possible.
- The tenant, Denise Baer will provide two weeks notice of the final move out date, or as early as possible to the landlord, Douglas Clark.
- If the tenant, Denise Baer vacates and surrenders all keys by midnight, May 15, 2005, then half of the excused rent for May, 2005 (\$987.50) will be provided to Denise Baer within 15 days of move-out.”

6. By a letter dated May 6, 2005, sent by certified mail, the Complainant provided the Agent with notice that she would be vacating the Property and surrendering all keys by midnight May 15, 2005, pursuant to the Lease Addendum. By the same May 6, 2005 letter, the Complainant also requested to be present for the final walk-through inspection of the Property on May 15, 2005, or within five days thereafter, and she provided the Agent with a permanent change of address.

7. The Complainant vacated the Property on May 15, 2005, and she left the keys in the Property at the time she vacated.

8. The Commission finds that pursuant to the terms and conditions of the Lease Addendum, the Complainant's tenancy terminated as of May 15, 2005, and she owes no additional rent to the Respondent.

9. The Complainant did not have the Property de-fleaed or de-ticked by a professional exterminator prior to vacating.

10. The Commission finds that the Respondent's Agent breached the Lease Addendum by failing to pay the Complainant \$987.50, one-half of May 2005 rent, within 15 days after she vacated the Property, by May 30, 2005.

11. By a letter dated June 27, 2005, forty-three (43) days after the termination of the Complainant's tenancy, the Agent sent the Complainant a security deposit refund check in the amount of \$111.11, and informed her that the partial refund was based on "a good faith estimate of the balance of the security deposit." The Agent's letter, sent to the Post Office box address provided by the Complainant, did not contain an itemization of the damages being claimed against the security deposit or a statement of the actual costs incurred to repair that damage, as required by § 8-203 (f)(1) of the State Code.

12. On July 15, 2005, sixty (60) days after the termination of the Complainant's tenancy, the Agent had an itemized list of damages, together with a statement of costs incurred, hand-delivered to the Complainant's new address by Alan DeLisi, a workman employed by the Respondent's Agent.

13. The Commission finds that the itemized list of damages was not personally delivered to the Complainant at her new residence, 11712 Enid Drive, Potomac, MD 20854, but was simply left inside the front entrance door. The Commission further finds that the itemized list of damages was not presented to the Complainant by first class mail within 45 days after the termination of the Complainant's tenancy, as required by § 8-203 (f)(1) of the State Code.

14. Based on the credible testimony of the Complainant, the Commission finds that the hand-delivered list of damages and the envelope it came in were chewed up by the Complainant's dog and not fully readable (See page 47 of Commission's Exhibit No. 1).

15. In response to a request for information by the Department, the Respondent's Agent provided a copy of the list of damages hand-delivered to the Complainant (See Page 46 of Commission's Exhibit No. 1), itemized as follows:

Charges:

\$ 200	plumb basement laundry tub – paper towels in drain pipe
185	exterminator
350	Black wall damaged ceilings
125	refrigerator handle, shelf, kick plate
45	disposer
185	candle wax inside sash windows
35	mailbox
185	driveway damage
375	shrubbery – trim and haul away
100	kitchen window
125	storm window and screen in rear bedroom
135	front – screen and kick plate
250	damage – hardwood floors
150	basement carpet – pet stains and odor
150	one-half of fence and gate for backyard

35 kitchen floor tile

\$2630 Total Charges

Credits:

\$1975 Security Deposit

119 Simple interest

- 111 Partial Security Deposit refund

\$1983 Credits

\$ 647 Shortage – (amount payable to Mr. Clark)

16. The Commission finds that the itemized list of damages hand-delivered to the Complainant's new address on July 15, 2005, is different from the list of damages provided by the Agent to the Department. Specifically, the list provided to the Department contains handwritten notations, including "\$120 – water bill", that were not on the list hand-delivered to the Complainant's new address. As a result, the Commission finds that the Agent did not advise the Complainant regarding an alleged unpaid water bill.

17. The Complainant, without the Respondent's permission or consent, repainted a bedroom with black paint which constitutes damage in excess of ordinary wear and tear. The Complainant also damaged the refrigerator door handle, shelf and kick-plate, the mailbox, screen door and hardwood floors, in excess of ordinary wear and tear. However, the Respondent and/or Respondent's Agent failed to provide any evidence, such as paid invoices or receipts or testimony from contractors, to demonstrate that they incurred any actual costs to repair those items. Therefore, the charges assessed against the Complainant's security deposit for these repairs are disallowed.

18. The Commission finds that the Complainant did not damage the following items in excess of ordinary wear and tear during her tenancy: the disposal, window sashes, driveway, exterior fencing and gate and kitchen floor tiles. Therefore, the costs assessed against the complainant's security deposit for these items are disallowed.

19. The Commission finds that the Complainant did not cause a blockage in the basement laundry tub during her tenancy. The receipt for the plumbing repair submitted by Respondent's Agent (See Respondent's Exhibit No. 6), from Acker & Sons Inc., dated March 17, 2005, two months before the termination of the Complainant's tenancy, states, in addition to repair of the basement toilet and master bedroom toilet, "replaced drain assembly on laundry sink." All three repairs cost a total of \$214.00. The Respondent and/or Respondent's Agent failed to persuade the Commission that that the Complainant caused damage to the drain assembly and therefore, the charge of \$200.00 assessed against the Complainant's security deposit is disallowed.

20. The Commission finds that the Complainant and/or the Complainant's pet did not cause any damage to the basement carpet during her tenancy. Furthermore, the receipt for the carpet cleaning submitted by Respondent's Agent (See Respondent's Exhibit No. 5), from Potomac ChemDry is undated, and in the amount of \$169.95, not the \$150.00 charged against the security deposit. The Respondent and/or Respondent's Agent failed to provide sufficient probative evidence to persuade the Commission that the stains on the carpet were from a pet and not from previous flooding in the basement. Therefore, the charge of \$150.00 assessed against the Complainant's security deposit for carpet cleaning is disallowed.

21. Pursuant to Paragraph 9, "Maintenance," of the Lease, the Complainant was responsible to "keep grass and shrubbery trimmed and maintained," during her tenancy. However, the Commission finds that Respondent's Agent waived this obligation and agreed to perform the required shrubbery trimming himself. This finding is based on the credible and un-rebutted testimony of Complainant's witness, Demelza Baer (See Transcript page 94), that "He [Douglas Clark] said that that was something that he was comfortable doing. And there were actually multiple times when he came over and did trim the shrubs. There was actually a rose bush that was growing that Mr. Clark completely trimmed away till there was nothing. We were somewhat disappointed because it was a nice feature in the yard." Therefore, the charge of \$375.00 assessed against the Complainant's security deposit for trimming shrubbery and hauling away the debris, is disallowed.

22. The Commission finds that the Complainant damaged the kitchen window and storm window and screen in the rear bedroom during her tenancy, which constitutes damage in excess of ordinary wear and tear, and that the Respondent or Respondent's Agent incurred actual expense in the amount of \$238.85 to repair the damage.

23. Pursuant to Paragraph 8, "Pets," of the Lease, the Complainant agreed to "pay for the cost of having the demised premises de-fleaed and de-ticked by a professional exterminator... at the termination of occupancy." The Commission finds that the Respondent or Respondent's

Agent incurred actual expense in the amount of \$185.00 to have the Property de-fleaed and de-ticked by a professional exterminator.

24. The Commission finds that the Complainant does not owe the Respondent or Respondent's Agent \$118.79 for a past due water bill. Respondent's Agent failed to provide sufficient probative evidence that the past due water bill was for a period of time that the Complainant occupied the Property, through May 15, 2005, and not for the period May 16, 2005 until July 8, 2005, the date the bill was paid. The Respondent and/or Respondent's Agent failed to provide sufficient probative evidence that the final water bill was for a period of time that the Complainant occupied the Property. Therefore, the charge of \$120.00 assessed against the Complainant's security deposit for an unpaid water bill is disallowed.

25. The Commission finds that the Respondent and/or the Respondent's Agent miscalculated the amount of interest that had accrued on the Complainant's security deposit. The correct amount of accrued interest is \$108.63, calculated as follows: \$1,975.00 security deposit x 1 year @ 4% = \$79.00 + ½ year @ 1.5% = \$29.63 = \$108.63. [11](#)

26. The Respondent's 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 full and fair consideration of the evidence, the Commission on Landlord-Tenant Affairs concludes:

1. The Respondent failed to substantiate that he incurred actual costs for most of the damages claimed against the Complainant's security deposit. The Respondent's assessment of \$1,495.00 against the Complainant's security deposit to repair damage for which no cost was actually incurred, constitutes a violation of § 8-203(f)(1)(i), § 8-203(f)(2), and § 8-203 (g)(1) of the State Code, and caused a defective tenancy.

2. The Respondent's assessment against the Complainant's security deposit the cost to repair damage that was not caused by the Complainant, \$200.00 to replace the basement drain assembly and \$150.00 for carpet cleaning, and the cost of a water bill that the Complainant did not owe, \$120.00, constitutes a violation of § 8-203(f)(1)(i), § 8-203(f)(2), and § 8-203 (g)(1) of the State Code, and has caused a defective tenancy.

3. 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, and “If the landlord fails to comply with this requirement, he forfeits the right to withhold any part of the security deposit for damages.” The Commission finds that the partial return of the security deposit on June 27, 2005, without an itemized list of damages fails to satisfy the requirements of the State Code. The Commission further finds the hand delivery of the itemized list on July 15, 2005, sixty (60) days after the termination of the Complainant’s tenancy, also fails to satisfy the requirements of the State Code. Therefore, although the Complainant caused damage to the Property in excess of ordinary wear and tear — damaged windows and screen and extermination — and the Respondent incurred actual expense in the amount of \$238.85 to repair the windows and \$185.00 to exterminate the Property, he has forfeited his right to withhold this amount from the Complainant’s security deposit.

4. Pursuant to § 8-203(f)(1)(ii) through (vii) of the State Code, the Complainant had the right to be present when the Respondent or the Respondent’s Agent inspected the Property in order to determine if any damage was done, if the Complainant notified the Respondent or Respondent’s Agent by certified mail of her intention to move, the date of moving, and her new address, and the notice was mailed at least 15 days prior to the date of moving. In this case, the Complainant’s notification was dated May 6, 2005, with a move out date of May 15, 2005, which is less than the prescribed 15 days. The Commission concludes therefore, that the Respondent or the Respondent’s Agent did not violate § 8-203(f)(1) of the State Code.

5. The Lease Addendum signed by the parties on April 29, 2005, required that the Respondent and/or Respondent’s Agent pay the Complainant the equivalent of one-half month’s rent, in the amount of \$987.50, if the Complainant vacated the Property prior to the end of the Lease term, by May 15, 2005, which she did. The Commission finds that the Lease Addendum is an enforceable portion of the Lease contract. The Commission further finds that the failure by the Respondent and/or Respondent’s Agent to honor the Lease Addendum and pay the Complainant \$987.50 within 15 days of the day she vacated, by May 30, 2005, constitutes a breach of the Lease and has caused a defective tenancy.

6. Pursuant to § 8-203(e)(1) and (2) of the State Code, simple interest accrued on a security deposit in the amount of 4% per year, at six-month intervals of 2% during the first year

of the Lease. However, § 8-203(e) of the State Code was amended effective October 1, 2004, and the amount of simple interest accrued on a security deposit changed from 4% per year to 3% per year, at 1.5% every 6 months. Therefore, the correct amount of simple interest accrued by the Complainant's security deposit is \$108.63.

7. As the Respondent failed to substantiate the he incurred any actual costs for most of the repairs he allegedly performed, the Commission concludes that the Respondent and Respondent's Agent had no reasonable basis to withhold \$1,495.00 from the Complainants' security deposit for repairs for which no cost was actually incurred plus \$350.00 to repair damage that the Complainant did not cause, \$375.00 to trim shrubbery and remove debris, or \$120.00 for a water bill that she did not owe. Such withholding and additional charges constitutes 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 Respondent and/or the Respondent's Agent's conduct in wrongfully withholding part of the Complainant's security deposit and whether or not the Respondent and/or Respondent's Agent acted in bad faith and prior history. Based on the evidence, the Commission concludes that the Respondent's conduct and Respondent's Agent's conduct do not rise to the level of bad faith or egregiousness necessary to award a penalty, and therefore, Complainant's request for such an award is denied. However, the Commission hereby cautions the Respondent and Respondent's Agent to apprise themselves of the law and conform their business practices accordingly.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondents must pay the Complainant **\$2,960.02**, which consists of the Complainant's security deposit (\$1,975.00) plus accrued interest (\$108.63), less the amount previously refunded (\$111.11), plus the equivalent of one-half of May 2005 rent (\$987.50).

Commissioner Matthew Moore, Commissioner Jeffrey Burritt, and Commissioner Andrea Mack, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondent, William H. Clark, Trustee, William H. Clark Trust, must forward to the Office of Landlord-Tenant Affairs, Attention: Michael T. Denney, Administrator, 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 Denise Baer, in the full amount of \$2,960.02.

The Respondent, William H. Clark, Trustee, William H. Clark Trust, 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 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 Respondent choose to appeal the Commission's Order, he must post a bond with the Circuit Court in the amount of the award (\$2,960.02) if a stay of enforcement of this Order is sought.

Andrea Mack, Panel Chair

Commission on Landlord-Tenant Affairs

[1] The amount of interest accrued by a security deposit changed from 4% per year (2% every 6 months) to 3% per year (1.5% every 6 months) effective October 1, 2004.