

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

In the matter of:	*	
	*	
Nina Waters-Sherrod	*	
	*	
Complainant	*	
	*	
V.	*	Case No. 33191
	*	
Cheryl Curry Martin	*	
	*	
Respondent	*	

Single Family: 15103 Whitetail Way, Gaithersburg, Maryland (Rental Facility License No. 40310)

DECISION AND ORDER

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland ("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 20th day of November, 2012, found, determined, and ordered as follows:

BACKGROUND

On April 19, 2012, Nina Waters-Sherrod, now known as Nina Moore ("Complainant"), former tenant at 15103 Whitetail Way, Gaithersburg, 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 Cheryl Curry Martin ("Respondent"), owner of the Property, through her management agent, Executive Housing Consultants ("Agent"): (1) failed to refund any portion of her \$7,400.00 security deposit plus accrued interest within 45 days after the termination of her tenancy, in violation of Section 8-203(e)(1) of the Real Property Article, Annotated Code of Maryland, as amended ("Real Property Article"); and (2) unreasonably assessed charges for damages that were not in excess of ordinary wear and tear or that were not her responsibility, in violation of Section 8-203(f)(1) of the Real Property Article.

The Complainant was seeking an order from the Commission for the Respondent to refund her entire security deposit plus accrued interest and a penalty of up to threefold the amount of the security deposit that was unreasonably withheld.

After determining that Case No. 33191 was not susceptible to conciliation, the Department referred this matter to the Commission, and on June 5, 2012, the Commission voted to conduct a public hearing on August 7, 2012. Due to a scheduling conflict, the hearing was subsequently rescheduled. The public hearing in the matter of Case No. 33191, Nina Waters-Sherrod v. Cheryl Curry Martin, was held on September 20, 2012.

The record reflects that the Complainant and the Respondent were given proper notice of the hearing date and time. Present at the hearing and offering evidence were the Complainant, Nina Waters-Sherrod, the Respondent's attorney Kevin McParland, three witnesses called to testify by the Complainant, Mary Markoff, Omari Braxton and Bianca Waters, and four witnesses called to testify by the Respondent's attorney, property manager Brian Ridgeway, contractor Greg Kunstbeck, contractor Yousef Abedellatif, and property manager J.D. Ricca. Respondent Cheryl Curry Martin was not in attendance.

The Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1.

The Commission entered into the record nine (9) exhibits offered by the Respondent:

- an invoice from NOVA Contracting Inc. in the amount of \$359.99 dated 01/06/2012, identified as Respondent's Exhibit No. 1;
- an invoice from MDCC, Inc. in the amount of \$250.00 dated 12/10/2010, identified as Respondent's Exhibit No. 2;
- an invoice from MDCC, Inc. in the amount of \$821.00 dated 12/10/2010, identified as Respondent's Exhibit No. 3;
- thirty-seven color photographs of the Property, identified as Respondent's Exhibit No. 4;
- three additional color photographs of the Property, identified as Respondent's Exhibit No. 5;
- a new Tenant Activity History Accounting 2/1/11-2/28/12, identified as Respondent's Exhibit No. 6;
- an Upper County Assistance Network ("UMAN") Confirmation of Payment in the amount of \$200 dated 1/31/11; a correspondence from UMAN reflecting payment of \$200.00 dated 2/2/11; a copy of check #5731 payable to Executive Housing Consultants from UMAN in the amount of \$200.00 dated 2/2/11; a copy of check #439834 payable to Executive Housing Consultants from Housing Opportunities Commission ("HOC") in the amount of \$500.00 dated 2/4/11; a copy of check #00168085 payable to Executive Housing Consultants from Montgomery County Department of Health and Human Services ("DHHS") in the amount of \$3,500.00 dated 1/31/11; a copy of check #02013867 payable to Executive Housing Consultants from Montgomery County DHHS in the amount of \$500.00 dated 01/31/2011; a copy of check #4079 payable to Executive Housing Consultants from Interfaith Works in the amount of \$300.00 dated 02/01/2011; a copy of check #1516 payable to Executive Housing Consultants from Nicholas and Mary Markoff in the amount of \$1800.00 dated 01/23/2011; a copy of check #1517 payable to Executive Housing Consultants from Nicholas and Mary Markoff in the amount of \$125.00 dated 01/26/2011; a Western Union Money Order #14-257955557 payable to Executive Housing Consultants with no amount or date noted; and a Western Union Money Order #14-257955260 payable to Executive Housing Consultants with no amount or date noted, all identified as Respondent's Exhibit No. 7;
- an invoice from General Plumbing Services in the amount of \$296.00 dated 4/28/11, identified as Respondent's Exhibit No. 8;
- an invoice from Jonathan M. Whelan LLC Plumbing Services in the amount of \$253.00 dated 01/4/11, identified as Respondent's Exhibit No. 9; and
- an invoice from MDCC, Inc. in the amount of \$450.00 dated 04/29/11, identified as Respondent's Exhibit No. 10.

The Commission also entered into the record one (1) exhibit offered by the Complainant, which included: a Money Gram Money Order Receipt #R102717511963 dated 03/01/2012 in the amount of \$249.00; a Money Gram Money Order Receipt #R203750277753 dated 03/01/2012 in the amount of

\$381.50; a WSSC Customer Services Information System Printout reflecting Payment Amount \$622.08 for Account #3974193 dated 2/29/2012; and a Western Union Speedpay Printout reflecting Credit to WSSC Account # 3974193 payment amount \$619.08 and Fee amount \$3.00 dated 02/29/2012; all identified as Complainant’s Exhibit No. 1.

FINDINGS OF FACT

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

1. On January 31, 2011, the Complainant and the Respondent executed a one-year lease agreement (“Lease”) for the rental of the Property, to begin February 5, 2011 and expire February 29, 2012, with a total monthly rent of \$3,700.00.
2. The Complainant paid the Respondent a security deposit in the amount of \$7,400.00, which amount was received in the Lease.
3. Paragraph 11 of the Lease states, in pertinent part, that the Complainant must pay all applicable electric utility charges.
4. The Commission finds that the Complainant took occupancy of the Property effective February 14, 2011.
5. On December 20, 2011, the Respondent sent the Complainant a written notice to vacate the Property effective February 29, 2012.
6. The Complainant’s tenancy terminated effective February 29, 2012.
7. The Commission finds that the Complainant’s security deposit accrued interest in the amount of \$222.00, through February 29, 2012;
8. On April 9, 2012, the Respondent’s Agent Brian Ridgeway, on behalf of the Respondent, sent the Complainant notice regarding her security deposit disposition, which stated:

	<u>Receipts</u>	<u>Disbursements</u>
Security Deposit Received plus statutory interest owed	\$7,622.00	
Replacement of stained and ruined carpet and padding throughout the house		\$5250.00
Electric Bill from 2/5/11 – 3/30/11		\$612.90
Replacement of all burnt out light bulbs, bad smoke detector batteries, cleaning of dirty areas in the house, removal of nail polish off vanity, re-installation of removed light fixtures, replacement of dirty HVAC filters, cleaning of jammed disposer		\$400.00
Repair of damaged hardwood floor in family room		\$900.00
Late fee 9/11 - owed \$185, \$37 already paid		\$148.00
Late fee 10/11		\$148.00

Late fee 11/11. \$18.50 already paid		\$162.50
Late fee 12/11. \$18.50 already paid		\$162.50
Late fee 1/12. \$18.50 already paid		\$162.50
Late fee 2/12. \$18.50 already paid		\$165.50
Damage caused by leak not noticed in reasonable amount of time		\$2953.00
Lost rent for time leak was being repaired		\$3700.00
Totals:	\$7622.00	\$11064.90*

Please remit the \$3442.90 shortage at your earliest opportunity.

*The Commission notes an addition error in the Disbursement Total reflected in this document signed by the Respondent's Agent Brian Ridgeway. Total Disbursements claimed equals \$14,764.90, not \$11,064.90.

9. At the hearing, the Respondent's attorney, Kevin McParland, amended the April 9, 2012 list of charges as follows: (1) reducing the charges for the electric bill (from \$612.90 to \$490.92); (2) removing the charges for September 2011 through February 2012 late fees (\$949.00); (3) removing lost rent abated by HOC (\$3,700.00) during the Tenant's tenancy; and (4) claiming other rent and late fees owed in the amount of \$740.50, which amendments reduced the amount claimed by the Respondent to \$10,734.42, and the requested payment from the Complainant to \$3,112.42.

10. The Commission finds that the testimonies of the Respondent's Agents, Brian Ridgeway and J.D. Ricca, regarding the receipt of and accounting for rent payments and late fees, was inconsistent and not credible.

11. The Commission finds the Respondent's accounting to be unreliable and inconsistent, based in part upon the absence of two receipted payments (Complainant's Exhibit #1) on the revised accounting (Respondent's Exhibit #6) presented by the Respondent at hearing, which were previously acknowledged by the Respondent (Commission Exhibit #1, p.119), as well as the Respondent's addition errors in the April 9, 2012, security deposit disposition

12. Based upon the testimony and evidence presented at the hearing, the Commission finds that the Complainant did not owe past due rent and late fees after the termination of her tenancy.

13. The Commission finds that the testimonies of the Respondent's Agents, Brian Ridgeway and J.D. Ricca, regarding the condition of the Property at the beginning of the Complainant's tenancy and the termination of the Complainant's tenancy were inconsistent and not credible.

14. The Commission finds that the carpeting in the Master Bedroom of the house was damaged by the Complainant in excess of ordinary wear and tear.

15. The Commission finds that the carpeting in the remainder of the Property was not damaged by the Complainant in excess of ordinary wear and tear.

16. The Commission finds that the Complainant is responsible for only the cost of replacing the Master Bedroom carpeting in the amount of \$1,256.85, and not the \$5,250.00 claimed for the entire carpet replacement.

17. The Commission finds that based on the testimony and evidence presented at the hearing, many of the defects the Respondent is attempting to charge against the Complainant's security deposit were pre-existing and present at the beginning of the Complainant's tenancy.

18. The Commission finds that the Respondent failed to provide sufficient evidence to establish that the Complainant damaged the Property in excess of ordinary wear and tear (other than the damaged master bedroom carpeting). Therefore, the costs incurred by the Respondent for replacement of all burnt out light bulbs, bad smoke detector batteries, cleaning of dirty areas in the house, removal of nail polish off vanity, re-installation of removed light fixtures, replacement of dirty HVAC filters, cleaning of jammed disposer in the amount of \$400.00, and repair of damaged hardwood floors in family room in the amount of \$900.00 are disallowed.

19. The Commission finds that the Complainant reported concerns regarding a possible problem with the kitchen sink at the Property, and was not responsible through acts of abuse, negligence or omission, for any damages resulting from a leak in the kitchen sink at the Property. Therefore, charges assessed for damage caused by a leak not noticed in a reasonable amount of time, in the amount of \$2,953.00 are disallowed.

20. The Commission finds that the Complainant is responsible for payment of the March 30, 2011 PEPCO electric utility bill for the period of February 14, 2011 through March 30, 2011, in the amount of \$456.12, and not the original claim of \$612.90 or the amended claim of \$490.92.

21. The Commission further finds that the Respondent did not have a good faith basis to make the deductions for rent in the amount of \$3,700.00; late fees in the amount of \$949.00; and rent and late fees claimed as amended at the hearing in the amount of \$740.50.

CONCLUSIONS OF LAW

Accordingly, based upon a full and fair consideration of the evidence, the Commission on Landlord-Tenant Affairs concludes that:

1. Pursuant to Section 8-203(f)(1)(i) of the Real Property Article, the Respondent was within his right to assess against the Complainant's security deposit, the cost incurred to repair damage caused to the Property's master bedroom carpeting by the Complainant in excess of ordinary wear and tear. Therefore, pursuant to Section 8-203(g)(1) of the Real Property Article, the Respondent may properly assess against the Complainant's security deposit \$1,256.85 to replace the master bedroom carpeting.

2. Pursuant to Section 8-203(f)(1)(i) of the Real Property Article, the Respondent was within his right to assess against the Complainant's security deposit the cost incurred for the electric bill from 2/14/11-3/30/11. Therefore, pursuant to Section 8-203(g)(1) of the Real Property Article the Respondent may properly assess against the Complainant's security deposit \$456.12 for electric utility services.

3. Pursuant to Section 8-203(f)(1)(i) of the Real Property Article the Respondent overcharged Complainant for electric utility services and the deductions from the security deposit for these costs beyond \$456.12 represents a violation of Section 8-203(g)(1) of the Real Property Article and have created a defective tenancy.

4. The Complainant did not owe the Respondent past due rent of \$3,700.00 or late fees in the amount of \$949.00 or \$740.50, and that pursuant to Section 8-203(f)(1)(i) of the Real Property Article, the deduction from the Complainant's security deposit for these costs represents a violation of Section 8-203(g)(1) of the Real Property Article.

5. The Respondent's deductions in the amount of \$5,293.15 from the Complainant's security deposit for: replacement of all burnt out light bulbs, bad smoke detector batteries, cleaning of dirty areas in the house, removal of nail polish off vanity, re-installation of removed light fixtures, replacement of dirty HVAC filters, and cleaning of jammed disposal (\$400.00); repair of damaged hardwood floors in family room (\$900.00); and carpet replacement outside the master bedroom (\$3,993.15); were for costs not in excess of ordinary wear and tear and therefore, constitute a violation of Section 8-203(f)(1)(i), and Section 8-203(f)(2) of the Real Property Article.

6. Pursuant to Section 8-203(f)(1)(i) of the Real Property Article, costs incurred for damages resulting from the kitchen sink leak in the amount of \$2,953.00, were not the Complainant's responsibility and the deductions from the security deposit for these costs represent a violation of Section 8-203(g)(1) of the Real Property Article and have created a defective tenancy.

7. The Respondent's failure to handle and dispose of the Complainant's security deposit plus accrued interest in accordance with the requirements of the applicable provisions of Section 8-203, "Security deposits," of the Real Property Article, has caused a defective tenancy.

8. The failure by the Respondent to refund \$5,909.03 of the Complainant's security deposit plus accrued interest was unreasonable and constituted a violation of Section 8-203(e)(4) of the Real Property Article. To award a penalty, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Respondent's conduct in wrongfully withholding the Complainant's security deposit and whether or not the Respondent acted in bad faith or has a prior history of wrongful withholding of a security deposit. Based on the evidence, and inconsistencies in the testimony of the Respondent's witnesses Brian Ridgeway and J.D. Ricca, the Commission concludes that the Respondent's conduct does rise to the level of bad faith and egregiousness necessary to award a penalty. Therefore, an additional award of \$2,954.52 as a penalty is granted.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondent must pay the Complainant **\$8,863.55**, which sum represents the Complainant's security deposit (\$7,400.00) plus accrued interest (\$222.00), less deductions for damage in excess of ordinary wear and tear in the amount of (\$1,256.85) and electric utility bill (\$456.12), plus a penalty of \$2,954.52.

Commissioner Laura Murray, Commissioner Robyn Jones, and Denise Hawkins, Panel Chairperson, unanimously concurred in the foregoing decision.

To comply with this Order, Respondent, Cheryl Curry Martin, must forward to the Office of Landlord-Tenant Affairs, Attention: Rosie McCray-Moody, 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 Nina Moore, in the full amount of \$8,863.55.

The Respondent, Cheryl Curry Martin, 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 (\$8,863.55) if she seeks a stay of enforcement of this Order.

Denise Hawkins, Panel Chair
Commission on Landlord-Tenant Affairs