

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

In the matter of:

Melanie Merrion  
Complainant

V.

Laurence Taff  
and  
Lois Feingold-Taff  
Respondents

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Case No. 33607

Rental Facility: 7914 Longridge Court, Cabin John, Maryland (Unlicensed as of July 1, 2012)

**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, and the Commission having considered the testimony and evidence of record, it is therefore, this 3<sup>rd</sup> day of July, 2013, found, determined, and ordered, as follows:

**BACKGROUND**

On December 13, 2012, Melanie Merrion (“Complainant”), former tenant at 7914 Longridge Court, Cabin John, Maryland (“Property”), a rental property 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 her former landlords, Laurence Taff and Lois Feingold-Taff (“Respondents”), owners of the Property: 1) failed to refund any portion of her \$6,000.00 security deposit plus accrued interest after the termination of her tenancy, in violation of Section 8-203(e)(1) of the Real Property Article, Annotated Code of Maryland, 1999, as amended (“Real Property Article”); 2) failed to send her an itemized list of damages, together with a statement of the costs actually incurred to repair those damages, within 45 days after the termination of her tenancy, in violation of Section 8-203(g)(1) of the Real Property Article, and therefore, pursuant to Section 8-203(g)(2), have forfeited their right to withhold any part of her security deposit for damages; and 3) based on the Respondents’ unreasonable withholding of all or a portion of her security deposit, pursuant to Section 8-203(e)(4) of the Real Property Article, she may be entitled to a penalty of up to three times the unreasonably withheld amount. The Complainant is seeking the return of her security deposit plus accrued interest, a penalty of up to threefold the amount of the security deposit that was unreasonably withheld, and payment of attorney’s fees.

Specifically, the Complainant asserts that the Respondents had no reasonable basis to withhold her security deposit plus accrued interest for rent or damages; that Respondents declined her offer to sublet the Property and failed to make efforts to re-rent the Property after she vacated; that after she vacated, the Respondents renovated the Property to prepare it for sale; and that the Respondents failed to substantiate any actual costs incurred resulting from her tenancy.

The Complainant is seeking an Order from the Commission for the Respondents to refund her entire \$6,000.00 security deposit plus accrued interest, pay a penalty of up to three times the amount of the security deposit that was unreasonably withheld by the Respondents, and pay her attorney's fees.

After determining that the complaint was not susceptible to conciliation, the Department duly referred this case to the Commission for its review, and on March 5, 2013, the Commission voted to hold a public hearing on April 29, 2013. On April 19, 2013 the Commission received a request for a continuance from the Complainant (Commission Exhibit #1, page 163), and the Commission granted a continuance of the hearing to May 14, 2013. On May 9, 2013, the Office received a request for continuance from the Respondents, along with a request for accommodations for Respondent Laurence Taff's disabilities (Commission Exhibit #1, pages 181-182). The Respondent's request for a continuance was denied, however reasonable accommodations were offered (Commission Exhibit #1, page 184). The public hearing in the matter of Melanie Merrion v. Laurence Taff and Lois Feingold-Taff relative to Case No. 33607 was held on May 14, 2013.

The record reflects that the Complainant and the Respondents were given proper notice of the hearing date and time. Present and sworn at the hearing and presenting evidence were Complainant, Melanie Merrion, the Complainant's attorney, Mark Hessell, the Commission's witnesses, Office of Landlord-Tenant Affairs Investigator Jane Blackwell and Housing Code Enforcement Inspector Lynn McCreary. The Respondents, Laurence Taff and Lois Feingold-Taff, failed to appear at the hearing.

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 entered, without objection, into evidence the following exhibits offered by the Complainant: (1) A copy of the floor plan for the Property, identified as Complainant's Exhibit No. 1, 3 pages; (2) Photographs of the Property, labeled October 27, 2012 and November 7, 2012, identified as Complainant's Exhibit No. 2, 3 pages; (3) A copy of The Office of Landlord-Tenant Affairs publication, "What is Ordinary Wear and Tear," identified as Complainant's Exhibit No. 3, 31 pages; (4) A copy of an email from the Complainant to Sharon Connell dated October 21, 2010, identified as Complainant's Exhibit No. 4; (5) Copies of emails between the Complainant and Sharon Connell, dated February 14, 2011, February 15, 2011 and February 17, 2011, identified as Complainant's Exhibit No. 5; (6) Copies of a series of emails between the Complainant and Sharon Connell dated June 3, 2008, June 4, 2008, December 9, 2008, December 15, 2008, December 19, 2008 and July 13, 2009, August 10, 2009, August 28, 2009, September 17, 2009, October 21, 2010 and February 14, 2011 and February 17, 2011, a Henry's Housework Inc. property inspection report dated July 9, 2009, photographs of the Property labeled December 15, 2008 and July 9, 2009 and July 13, 2009, identified as Complainant's Exhibit No. 6, 16 pages; and (7) a "Declaration of Mark Hessell" dated May 13, 2013, identified as Complainant's Exhibit No. 7, 2 pages. The hearing record was closed on May 14, 2013.

### **FINDINGS OF FACT**

Based on the testimony and evidence of record, the Commission makes the following Findings of Fact:

1. The Commission finds that, on January 30, 2008, the Complainant and the Respondents fully executed a lease agreement (“Lease”) for the rental of the Property, which commenced on February 8, 2008, and expired February 28, 2010 (Commission Exhibit #1, Page 32).

2. The Commission finds that the Complainant paid the Respondents a security deposit in the amount of \$6,000.00, which amount is receipted in paragraph #10 of the Lease (Commission Exhibit #1, Pages 34 and 43).

3. The Commission finds that on February 19, 2010, the Complainant and Respondents’ agent, Sharon Connell of Long & Foster Realty, fully executed an amendment to the Lease, extending the Lease effective March 1, 2010 through the last day of February 2012 (Commission Exhibit #1, Page 46).

4. The Commission finds that on March 3, 2012, the Complainant and Respondents fully executed an amendment to the Lease which states that: “1) Long and Foster Real Estate Inc. is no longer the agent or manager of the Property. The property will be managed by the owners, and 2) Rent will continue at the current rate of \$4,800 per month. Tenant is in the process of negotiating a date that a to-be built house will be ready for move-in. This date may change the end of lease date by a month or two. The tenant intends to remain in the property until at least December 31, 2012 with an option to remain until April 30, 2013. The tenant will keep the owners regularly apprised of the intended move out date, and at a minimum, will provide at least 60 days notice of intent prior to December 31, 2012.” (Commission Exhibit #1, Page 47).

5. The Commission finds credible the Complainant’s testimony that a specific end of tenancy date was intentionally not defined in the 2012 amendment to Lease, in order to provide flexibility to both parties.

6. The Commission finds that although the 2012 amendment to the Lease expressed the intent to remain at the Property through December 31, 2012, it does not define a clear declaration of the end of tenancy and is not binding. The Commission finds that as of March 1, 2012, the Complainant became a month-to-month tenant.

7. The Commission finds that on September 18, 2012, the Complainant sent the Respondents an email stating that she had purchased a house and would begin moving that week, but provides no specific vacate date. The Complainant also advised that she was laid off from her job on August 17, 2012. The Complainant proposes several options regarding her termination, including the possibility of subletting. (Commission Exhibit #1, Page 61).

8. The Commission finds that the Complainant’s September 18, 2012 email does not serve as a proper notice to vacate, inasmuch as no vacate date is provided in the email.

9. Section 29-27(q) of the Montgomery County Code, 2001, as amended states:

**29-27. Contents of lease...**

Each lease for rental housing located in the County must:...

(q) Permit the tenant to sublease the dwelling unit with the landlord's written permission, which the landlord must not unreasonably withhold.

10. The Commission finds that on September 19, 2012, the Respondents sent the Complainant an email denying her right to sublet, stating in pertinent part “do not bother with a sub-lessee---frankly too much trouble for us.” (Commission Exhibit #1, Page 63). The Commission finds the Respondents’ denial of the Complainant’s right to sublet unreasonable.

11. The Commission finds that on October 26, 2012, the Respondents sent the Complainant notification that they would be at the house on Friday, November 2, 2012. The Respondents advised that they will have contractors working on the exterior and interior of the house to repair damages throughout November 2012, and provided an estimated list of damages totaling \$15,285.00. The Respondents further advised that the current estimated damages, less \$6,000.00 security deposit, leaves a balance owing of \$9,285.00, and that additional charges may include the remaining two months if unpaid, replacement of the sub-floor if it is damaged and requires replacement, and other damages caused by Complainant yet to be determined, and attorney’s fees plus 10% (Commission Exhibit #1, Page 69-71).

12. The Commission finds that on November 1, 2012, the Complainant advised the Respondents by email that she left the keys and garage door opener on the counter (Commission Exhibit #1, Page 79).

13. The Commission finds credible the Complainant’s testimony that she moved the majority of her personal items from the house in September 2012 and returned the keys to the Respondents, effective November 1, 2012, paying rent through October 2012.

14. The Commission finds that the Complainant vacated the Property on or before November 1, 2012; and paid rent in full through October 31, 2012;

15. Multiple Real Estate Listings show that the Property was listed for sale only beginning February 1, 2013 (Commission Exhibit #1, Pages 124-126).

16. The Commission finds that there is no probative evidence to indicate that the Respondents made any effort to mitigate their damages by offering the Property for rent after the Complainant notified them of her intention to terminate her tenancy or after she returned possession of the Property.

17. The Commission finds that the Complainant’s tenancy terminated as of October 31, 2012;

18. The Commission finds that the Complainant’s security deposit accrued interest in the amount of \$810.00 through October 31, 2012.

19. The Commission finds that on November 15, 2012, Daniel Rigterink, the Complainant’s attorney at that time, sent the Respondents correspondence, advising that the Complainant vacated, returned possession and the keys to Property effective November 1, 2012, and requesting return of her security deposit plus interest to be made payable to her c/o the attorney at 7315 Wisconsin Avenue, Suite 800 West, Bethesda, MD 20814. (Commission Exhibit #1, Pages 109-110).

20. The Commission finds that on December 14, 2012, the Respondents sent to the Complainant, mailed to her at the Property address, a revised list of estimated damages stating that, “the estimates, repairs per se, and further investigation have been slowed by the effects of hurricane Sandy on the larger community of contractors who provide services and not because we have been slow in

effecting repairs....and the revised version...is still not final.” (Commission Exhibit #1, Pages 118-120).

21. The Commission finds that the Respondents did not send an itemized list of damages to the Complainant, along with an itemization of actual costs incurred, to the Complainant’s last known address within forty-five days of the termination of tenancy.

22. The Commission finds that to date, the Respondents have failed to provide the Complainant, the Office, or the Commission with documentation including: Any documentation reflecting efforts to re-rent the Property; any paid bills, invoices and/or receipts and proof of payment (ie: cancelled checks, front and back) for any charges assessed against the Complainant; proof of purchase and date of installation, reflecting the age of any items that were replaced in the Property, for which the Complainant is being held responsible; and the name(s), address(es) and telephone number(s) of the contractor(s) or workmen who performed repair, replacement, maintenance and/or cleaning work at the Property for which the Complainant is being held responsible.

23. The Commission finds that there is no probative evidence to indicate the Respondents incurred actual costs to repair any damages as a result of the Complainant’s tenancy, or that the Respondents had any reasonable basis to withhold the security deposit plus accrued interest.

24. The Commission finds that the Respondents were properly served with the “Summons and Statement of Charges and Notice of Hearing” (Commission’s Exhibit 1, Pages 145-148, 152, 164-166, 184-188).

25. The Commission finds that the Complainant has incurred attorney’s fees related to this matter in the amount of \$2775.00, based on the evidence (Complainant’s Exhibit #7) and assertion of the Complainant’s attorney Mark Hessel on the record.

### **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 that:

1. The Respondents unreasonably denied the Complainant the right to sublet the Property, in violation of Section 29-27(q) of the Montgomery County Code, 2001, as amended, and have created a defective tenancy.

2. The Respondents failed to make any effort to mitigate their damages by offering the Property for rent after the Complainant’s returned possession of the Property on November 1, 2012, in violation of Section 8-207(a) of the Real Property Article. Therefore the Complainant’s tenancy was terminated as of October 31, 2012.

3. The Respondents failed to send the Complainant, to her last known address, within 45 days after the termination of her tenancy (by December 15, 2012), a written list of the damages claimed against the security deposit together with a statement of the cost actually incurred, as required under Section 8-203(g)(1) and (2) of the Real Property Article, and have created a defective tenancy. Therefore, pursuant to Section 8-203 (g) (2), the Respondents have forfeited their right to withhold any portion of the Complainant’s security deposit for damages.

4. The Respondents' failure to return to the Complainant the security deposit (\$6,000.00) plus accrued interest (\$810.00) in the total amount of \$6,810.00 within 45 days after the end of tenancy constitutes a violation of Section 8-203(e)(1) of the Real Property Article and has created a defective tenancy.

5. In addition to the Respondents' failure to return \$6,810.00 of the Complainant's security deposit plus accrued interest, the Respondents also failed to provide the Complainant, the Office of Landlord-Tenant Affairs and the Commission with evidence as to why there was a reasonable basis to withhold any portion of the Complainant's security deposit plus accrued interest. The record is devoid of any evidence to contradict the conclusion that the Respondents acted in bad faith.

6. 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 the Complainant's security deposit and whether or not the Respondents acted in bad faith or has a prior history of wrongful withholding of a security deposit. The Commission concludes that the Respondents': failure to provide an itemization of damages to the Complainant's last known address pursuant to Paragraph 19 of the Commission's Findings; failure to mitigate damages for lost rent pursuant to Paragraph 16 of the Commissions' findings; failure to substantiate any actual costs incurred for repair of alleged damages after the Complainant's termination of tenancy; and failure to refund the Complainant's \$6,810.00 security deposit plus accrued interest was willful, unreasonable and egregious, and caused a defective tenancy. Based on the evidence, the Commission concludes that the Respondents' conduct does rise to the level of bad faith and egregiousness necessary to award a penalty. Therefore, an award of \$4,405.00 as a penalty is granted.

7. The Complainant's attorney, Mark Hessel, submitted a total claim of \$2,775.00 for attorney's fees. The panel concludes that an award of attorney's fees will not be granted in this case.

### **ORDER**

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondents must pay the Complainant **\$11,215.00**, which sum represents the Complainant's security deposit (\$6,000.00), plus accrued interest (\$810.00), and a penalty (\$4,405.00).

To comply with this Order, Respondents, Laurence Taff and Lois Feingold-Taff, 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 from the date of this Decision and Order, a check or money order, made payable Melanie Merrion, in the amount of **\$11,215.00**.

The Respondents, Laurence Taff and Lois Feingold-Taff, are hereby notified that Section 29-48 of the County Code provides that failure to comply with this Decision and Order is a Class A violation punishable by a \$500.00 civil fine for each offense as set forth in Section 1-19 of the County Code. Each day that a violation continues is a separate offense. Therefore, the 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 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 for additional legal enforcement.

Commissioner Charles Marschke, Commissioner Beverly Flanagan, and Commissioner Galia Steinbach, Panel Chairperson, unanimously concurred in the foregoing decision.

Any party aggrieved by this action of the Commission may file an administrative appeal in 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 judicial review of administrative agency decisions. Also, in accordance with 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, **\$11,215.00**, if a stay of enforcement of this Decision and Order is sought.

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Galia Steinbach, Panel Chairperson  
Commission on Landlord-Tenant Affairs