

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

In the matter of:	*	
	*	
Sherita Williams	*	
	*	
Complainant	*	
	*	
V.	*	Case No. 33933
	*	
Jitendra Motwani	*	
and	*	
Raj Motwani	*	
	*	
Respondents	*	

Single Family: 12867 Climbing Ivy Drive, Germantown, Maryland (Rental Facility License No. 51157)

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 31st day of January, 2014, found, determined, and ordered as follows:

BACKGROUND

On June 21, 2013, Sherita Williams (“Complainant”), former tenant at 12867 Climbing Ivy Drive, Germantown, 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 Jitendra Motwani and Raj Motwani (“Respondents”), owners of the Property, through their management agent, Vipin Motwani (“Agent”): (1) failed to notify her of the date and time of the walk-through inspection at the end of the tenancy; (2) failed to refund any portion of her \$2,250.00 security deposit plus accrued interest within the 45 days after the termination of her tenancy, in violation of § 8-203(e)(1) of the Real Property Article, Annotated Code of Maryland, as amended (“Real Property Article”); and (3) unreasonably assessed charges for damages that were pre-existing, not in excess of ordinary wear and tear, or are not tenant 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 Respondents to refund her entire \$2,250.00 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. 33933 was not susceptible to conciliation, the Department referred this matter to the Commission, and on October 1, 2013, the Commission voted to conduct a

public hearing on the matter. The public hearing in the matter of Case No. 33933, Sherita Williams v Jitendra Motwani and Raj Motwani, was held on November 19, 2013.

The record reflects that the Complainant and the Respondents were given proper notice of the hearing date and time. Present at the hearing and offering evidence were the Complainant, Sherita Williams, the Respondents Jitendra Motwani and Raj Motwani, and the Respondents' Agent Vipin Motwani.

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 two (2) exhibits offered by the Complainant: (1) thirteen photographs of the Property taken in March and May 2012, identified as Complainant's Exhibit No. 1; and (2) a printout from the State of Maryland Department of Labor, Licensing and Regulation website, for "Active Licensed Home Improvement" for Champion Model and Design, identified as Complainant's Exhibit No. 2. The Commission also entered into the record one exhibit offered by the Respondents: a Housing Opportunities Commission, Housing Quality Inspection Report dated February 27, 2012, identified as Respondent's Exhibit No. 1.

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:

1. On February 24, 2012, the Complainant, a participant in the Housing Opportunities Commission's (HOC) Housing Choice Voucher Program, and the Respondents executed a lease agreement ("Lease") for the rental of the Property, which commenced on March 1, 2012, and expired February 28, 2013, with a total monthly rental of \$2,300.00.
2. The Complainant paid the Respondents a security deposit in the amount of \$2,250.00, which amount was receipted in the Lease.
3. On January 15, 2013, the Complainant and Respondent Jitendra Motwani signed the Complainant's Notice of Intent to Vacate the Property effective March 1, 2013. In this Notice, the Complainant requested to be present at the move-out inspection.
4. The Complainant did not vacate the Property on March 1, 2013.
5. The Commission finds credible the Complainant's testimony that in February 2013, she gave the Respondents' Agent verbal notice that she was extending her notice to vacate through March 2013 due to her delayed relocation through HOC's Housing Choice Voucher Program, that she paid rent through March 31, 2013; that she fully vacated effective March 31, 2013; and that she returned the keys to the Respondents by regular mail pursuant to the Respondents' request.
6. The Commission finds credible the Respondents' Agent's testimony that he requested the Complainant to return the keys to him through the mail, as is his practice with all tenants.

7. The Commission finds that the Complainant's tenancy terminated effective March 31, 2013.

8. The Commission finds that the Complainant accrued interest on her security deposit in the amount of \$67.50.

9. The Commission finds that the Complainant failed to send the Respondents a request to be present at the walk-through inspection by certified mail at least fifteen days prior to her March 31, 2013 move-out. The Commission finds that the Respondents were not obligated by law to send the Complainant notification of the time and date of the walk-through inspection.

10. The Commission finds credible, based on the evidence and the testimony of the Respondent's Agent, that on April 4, 2013, the Respondent's Agent went to the Property and conducted the walk-through inspection, and sent the Complainant notice by email advising the move-out inspection had been conducted, listing the following issues and repair estimates including:

- New interior paint required in entire home (\$1800 Labor; \$400 Material)
- Carpet needs to be cleaned - (\$250)
- Home needs to be professionally cleaned - (\$100)
- Oven/stove needs to be professionally cleaned (inside) (\$50)
- Basement door needs to be reset on hinges (\$50)
- Other minor damage (nails, toilet paper holder, switches, etc) (\$100)

The Commission finds that in an additional email on April 4, 2013, the Respondents' Agent advised the Complainant that the final water utility bill was overdue, and that a portion of the deposit would be withheld until she paid the final water bill.

In both emails the Respondents' Agent offered to meet the Complainant at the Property for an inspection.

11. The Commission finds that the April 4, 2013 notice from the Respondents to the Complainant references estimated costs, and not actual costs incurred.

12. The Commission finds credible the testimony of the Respondent's Agent that on May 17, 2013, forty-seven (47 days after the termination of the Complainant's tenancy) he sent correspondence to the Complainant by First-Class mail, addressed to the Complainant at her new address, providing a list of damages including:

- New interior paint required in entire home (\$1800 Labor; \$400 Material)
- Carpet needs to be cleaned - (\$250)
- Home needs to be professionally cleaned - (\$100)
- Oven/stove needs to be professionally cleaned (inside) (\$50)
- Basement door needs to be reset on hinges (\$50)
- Other minor damage (nails, toilet paper holder, switches, etc) (\$100)

13. At the hearing, the Complainant acknowledged that she did not make payment of the final Washington Suburban Sanitary Commission ("WSSC") bill for the Property, and agreed to accept the deduction from the security deposit for the WSSC bill. The Commission finds that the Respondent incurred costs in the amount of \$276.47 for the WSSC bill for services through March 19, 2013.

CONCLUSIONS OF LAW

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

1. The Respondents had no obligation to notify the Complainant by certified mail of the time and date when the premises were to be inspected at the end of tenancy pursuant to 8-203(f)(iv) of the Real Property Article, inasmuch as the Complainant failed to request the inspection by certified mail to the Respondents, at least fifteen days prior to her move-out pursuant to Section 8-203(f)(ii) and (iii) of the Real Property Article.

2. The Respondents failed to send the Complainant within 45 days (by May 15, 2013) after the termination of her tenancy, a written list of the damages claimed against the security deposit together with a statement of the cost actually incurred, pursuant to Section 8-203(g)(1) and (2) of the Real Property Article, and has 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.

3. The Respondents' failure to return the Complainant interest in the amount of \$67.50 which had accrued on her security deposit constitutes a violation of Section 8-203(e)(1) of the Real Property Article, and has created a defective tenancy.

4. The Respondents' failure to return to the Complainant, the security deposit (\$2,250.00) plus accrued interest (\$67.50), in the total amount of \$2,317.50, 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. The Respondents' 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.

6. Pursuant to the Complainant's agreement at the hearing to accept responsibility for the final WSSC bill, the withholding of \$276.47 for the WSSC bill by the Respondents is allowed.

7. Although the Commission finds violations of Section 8-203 of the Real Property Article, 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 or have a prior history of wrongful withholding of a security deposit. Based on the evidence, the Commission concludes that the Respondents' conduct does 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.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondent must pay the Complainant **\$2,041.03**, which sum represents the Complainant's security deposit (\$2,250.00) plus accrued interest (\$67.50), less deduction for the water utility bill (\$276.47).

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

To comply with this Order, Respondents Jitendra Motwani and Raj Motwani 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 from the date of this Decision and Order, a check made payable to Sherita Williams, in the full amount of \$2,041.03.

The Respondents, Jitendra Motwani and Raj Motwani, 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 as a Class A violation under the County Code 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, should the Commission determine that the Respondents have not, within thirty (30) calendar days from 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 under the Maryland Rules governing administrative appeals. In accordance with Section 29-49 of the County Code, should the Respondents choose to appeal the Commission's Order, he must post a bond with the Circuit Court in the amount of the award (\$2,041.03) if they seek a stay of enforcement of this Order.

David Goldberg, Panel Chair
Commission on Landlord-Tenant Affairs