

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

In the matter of:	*	
	*	
Mark Lindsay and Carla Morris	*	
	*	
Complainants	*	
	*	
V.	*	Case No. 34113
	*	
T. Mpoy Kamulayi and Muleka Mubikayi	*	
	*	
Respondents	*	
	*	

Rental Facility: 10904 Balantre Lane, Potomac, MD 20854 (Unlicensed)

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 4th day of March, 2014, found, determined, and ordered, as follows:

BACKGROUND

On October 8, 2013, Mark Lindsay and Carla Morris ("Complainants"), former tenants at 10904 Balantre Lane, Potomac, MD ("Property"), an unlicensed 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 they alleged that their former landlords, T. Mpoy Kamulayi and Muleka Mubikayi, owners of the Property (“Respondents”): (1) failed to refund their security deposit plus accrued interest after the termination of their tenancy, in violation of Section 8-203(e)(1) of the Real Property Article, Annotated Code of Maryland (2003 & Supp. 2007) (“Real Property Article”); and, (2) failed to send them an itemized list of damages, together with a statement of the costs actually incurred to repair that damage, within the 45 days after the termination of their tenancy, in violation of Section 8-203 (g) (1) of the Real Property Article.

The Complainants assert that they did not damage the Property in excess of ordinary wear and tear during their tenancy, and therefore, the Respondents had no reasonable basis to withhold any portion of their security deposit plus accrued interest.

The Respondents contend that the Complainants damaged the Property in excess of ordinary wear and tear during their tenancy, and that the amount withheld from the security deposit was for actual cost incurred to repair those damages.

The Complainants are seeking an Order from the Commission for the Respondents to refund their security deposit (5,500.00) plus accrued interest (\$495.00), in the amount of \$5,995.00, and a penalty of up to three times that amount based on the Respondents' unreasonable withholding.

After determining that the complaint was not susceptible to conciliation, the Department referred this case to the Commission for its review, and on December 3, 2013, the Commission voted to hold a public hearing on February 11, 2014. The public hearing in the matter of *Mark Lindsay and Carla Morris v. T. Mpoy Kamulayi and Muleka Mubikayi* relative to Case No. 34113 was held on February 11, 2014.

The record reflects that the Complainants and the Respondents were given proper notice of the hearing date and time. Present and sworn at the hearing and presenting evidence were Complainant Mark Lindsay, the Respondents T. Mpoy Kamulayi and Muleka Mubikayi; and their attorney, Todd Kelting.

Without objection, the Commission entered into the record 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 Respondents: (1) An untitled table showing a summary of rent balance owed by the Complainants at the end of the tenancy for the time period January 2013 through July 2013, identified as Respondents' Exhibit No.1; (2) An envelope mailed to the Complainants' last known address, via certified mail on September 13, 2013, identified as Respondents' Exhibit No. 2; and, (3) A receipt from the Department of Housing and Community Affairs-Licensing and Registration Unit, showing that on November 7, 2013, the Complainants applied for a rental license, identified as Respondents' Exhibit No. 3.

FINDINGS OF FACT

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

1. The Commission finds that on April 29, 2010, the Respondents and the Complainants signed a two year lease agreement ("Lease") for the rental of the Property, which commenced on May 1, 2010, and expired on April 30, 2012, for a monthly rent of \$5,000.00 for the first year and \$5,250.00 for the second year (Commission Exhibit No. 1 – Pages 11 through 26).

2. The Commission finds that on or about April 29, 2010, the Complainants paid the Respondents a security deposit, in the amount of \$5,500.00; the receipt of which is acknowledged in the Lease (Commission Exhibit No. 1 – Page 12).

3. The Commission finds credible the Complainants and Respondents' testimony that they renewed the original Lease for a period of one more year which started on May 1, 2012 and ended on April 30, 2013. There is no copy of this Lease renewal on file.

4. The Commission finds that at the expiration of the lease renewal term, the Complainants remained at the Property as tenants on a month to month basis.

5. The Commission finds that by a letter dated June 11, 2013, the Respondents provided the Complainants with a Notice to Vacate the Property by July 31, 2013 (Commission Exhibit No. 1 – Page 27).

6. The Commission finds that on July 31, 2013, the Complainants vacated the Property, having paid rent in full through that date.

7. The Commission finds that on August 1, 2013, the Respondents and Complainant Carla Morris conducted a final walkthrough inspection of the Property at which time no damages in excess of ordinary wear and tear were noted. There is no final inspection report on file.

8. The Commission finds that on September 13, 2013, within 45 days of the termination of the Complainants' tenancy, the Respondents sent the Complainants an itemized list of damages claimed against their security deposit, which included invoices but not receipts for the actual cost incurred to repair the damages (Commission Exhibit No. 1 – Page 51-52, and Respondent's Exhibit No. 2).

9. The Commission finds that the September 13, 2013 list submitted by the Respondents states the following:

“...Mr. Mark F. Lindsay and Ms. Carla Morris
10904 Balantre Lane
Potomac, MD 20854
Re: Your security deposit for tenancy at 10904 Balantre Lane, Potomac,
Maryland

Pursuant to Article 10 of the lease agreement between us dated April 29, 2010, please find below a detailed account of the expenses we have incurred to defray the costs of your outstanding obligations as follows: (i) rent payment and related late fees as per our notice of July 28, 2013, (ii) utilities bills, namely, water and heating oil, and (iii) the cost of justified repairs resulting from your tenancy as itemized below.

1. Refilling of fuel tank	\$ 833.95
2. Water bill for the period May 24 through July 31, 2013	\$ 264.33
3. Cleaning of windows	\$ 550.00
4. Replace missing blinds in family room and bedroom #4	\$1,189.68
5. Repair damage to hardwood floor in the family room	\$1,300.00
6. Replace burnt out light bulbs in basement, porch outside the family room, kitchen, den, foyer, dining room, bathrooms and bedrooms	\$ 514.00

7. Replace broken thermostat in basement	\$ 110.00
8. Replace broken door to second floor bathroom	\$ 350.00
9. Paint the replaced door and drywall patches	\$ 350.00
10. Replace 3 missing door stops	\$ 130.00
11. Replace light cover in master bedroom closet	\$ 25.00
12. Patch holes in walls behind 3 bedrooms doors	\$ 100.00
13. Retooling of disabled home protection system	\$ 733.52
14. Shortfall from rent payment due on January 1, 2013	\$ 400.00
15. Accrued late fee payments as per our notice of July 29, 2013	\$1,656.00
16. Shortfall from late fee due on your rent payment made on July	\$ 144.00

The total amount of monies that you owe us is **\$8,650.48** as per attached invoices.

Pursuant to Article 10 of the lease agreement, we have withheld your security deposit and accrued interest in the amount of \$5,549.68 to cover your outstanding liabilities. As a result, we do hereby demand that you pay us the remaining balance of **\$3,100.80** by cashier check to be mailed to us not later than October 15, 2013...”

10. The Commission finds credible the Respondents’ testimony that there was some damage at the Property after the Complainants vacated. However, the Respondents did not provide sufficient probative evidence or documentation to prove that those damages were in excess of ordinary wear and tear.

11. The Commission finds that the Respondents did not provide enough probative evidence that the damages claimed against the Complainants security deposit plus interest were for actual cost incurred to repair those damages.

12. The Commission finds credible the Complainants’ testimony that some of the repairs done to the Property were for damages that existed at time of move-in, as stated in the Move-in Property Inspection Report (Commission Exhibit No. 1 – Page 28-30)

13. The Commission accepts the recommendation of Respondents’ counsel that items No. 4 – Replace missing blinds in the family room and in bedroom #4 (\$1,189.68); and, #5 – Repair damage to hardwood floor in the family room (\$1,300.00), listed as damages on the September 13, 2013, correspondence, should be removed from the list of damages claimed against the Complainants’ security deposit.

14. The Commission finds that pursuant to Montgomery County Department of Housing and Community Affairs (DHCA)-Licensing and Registration Unit records, the Respondents were unlicensed landlords in Montgomery County throughout the entire rental period (May 2010 – July 2013) (Commission Exhibit No. 1 – Page 97, 99 and 103). On October 9, 2013, DHCA issued the Respondents a class A Civil Citation in the amount of \$500.00 for failure to obtain a rental facility license.

15. The Commission finds that the Respondents applied for a rental license with DHCA on November 7, 2013, almost four months after the Complainants vacated the Property (Respondents' Exhibit No. 3).

16. The Commission finds that the Respondents failed to credit the Complainants' security deposit with the proper amount of simple interest which had accrued on their \$5,500.00 security deposit from the commencement of their tenancy, May 1, 2010, until the termination of their tenancy, July 31, 2013, in the amount of \$495.00 (Commission Exhibit No. 1 – Page 103).

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. Pursuant to Section 8-203(g)(1) and (2) of the Real Property Article, "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 "[i]f the landlord fails to comply with this requirement, he forfeits the right to withhold any part of the security deposit for damages." The Commission concludes the Respondents, did send a written list of damages to the Complainants within 45 days after their tenancy ended. However, the Respondents failed to demonstrate that they incurred costs to repair those damages. Therefore, a violation of Section 8-203 (g) (1) has occurred and a defective tenancy has been created.

2. The Commission concludes that, based on the testimony and evidence presented, although the Respondents sent an itemized list of damages within the time-frame mandated by law, the charges assessed against the Complainants' security deposit plus interest were for damages that were not in excess of ordinary wear and tear; and/or were not for actual costs incurred. Therefore, the Commission concludes that the following charges assessed against the Complainants' security deposit plus interest are not permissible:

- (A) Refilling of fuel tank (\$833.95)– This cost was not paid for until 10/22/13, 83 days after the Complainants vacated the Property;
- (B) Water bill (\$264.63) for the period 5/24/13 through 8/23/13 – This cost was not paid until 10/28/13, 89 days after the Complainants vacated the Property;
- (C) Cleaning of windows (\$550.00) – There is an estimate on the record, but no probative evidence that this work was performed or paid for;
- (D) Replace missing blinds (\$1,189.68) – Respondents' attorney agreed at the hearing to withdraw this charge;
- (E) Repair damage to hardwood floor in the family room (\$1,300.00) – Respondents' attorney agreed at the hearing to withdraw this charge;
- (F) Replacement of burned out light bulbs (\$514.00), replace broken thermostat in basement (\$110.00), replace broken door (\$350.00), paint

the replaced door and dry wall patches (\$350.00), replace 3 missing door stops (\$130.00), replace light cover in master bedroom closet (\$25.00), patch holes in walls behind 3 bedrooms doors (\$100.00), for a total amount of \$1,579.00. These items were included on an estimate provided by Reilly & Reilly Contractors, dated September 20, 2013, and the contract for acceptance of terms and conditions was signed for by the Respondents on October 17, 2013, 78 days after the Complainants vacated the Property;

- (G) Retooling of disabled home protection system (\$733.52) – The record shows this work was performed on November 1, 2013, 122 days after the Complainants vacated the Property.

3. Furthermore, the Commission concludes that as an unlicensed rental property (through the entire rental period), the Respondents are not entitled to assert their rights under the lease, including demands for shortfall from rent payments and late fees. Maryland Court of Appeals in *McDaniel v. Baranowski*¹ held that an unlicensed landlord is not entitled to obtain summary ejectment relief from the court. While the *McDaniel* case involved a summary ejectment action, given the outcome of *Stinson v. Avinson*² in Montgomery County Circuit Court, it appears that the Court's reasoning in *McDaniel* would apply to other judicial relief requested by an unlicensed landlord. Hence, the Respondents are not entitled to assert their rights under the lease, including demands for back rent and late fees. Therefore, the following charges assessed against the Complainants' security deposit plus interest are not permissible:

- A) Shortfall from rent payment due January 1, 2013 (\$400.00);
- B) Accrued late fee payments as per notice July 29, 2013 (\$1,656.00);
- C) Shortfall from late fee due on rent payment made July 30, 2013 (\$144.00).

4. The Commission concludes that the charges assessed against the Complainants' security deposit plus interest in the amount of \$8,650.48, are not permissible.

5. The Commission concludes that the Complainants do not owe the Respondents the amount of \$ 3,100.80, as claimed on the September 13, 2013, correspondence.

6. The Commission concludes that the Respondents' failure to pay the Complainants the correct amount of interest which had accrued on their security deposit constitutes a violation of Section 8-203 (e) (1) of the Real Property Article and has created a defective tenancy.

7. Although the Commission concludes that charges assessed against the Complainants' security deposit (\$5,500.00) plus accrued interest (\$495.00) were unreasonable

¹ *McDaniel v Baranowski*, 419 Md. 560 (2011).

² *Stinson v. Avinson*, Civ. No. 374460V (Montgomery County., Md. Cir. Ct. Sept. 27, 2013).

and constitute a violation of Section 8-203 (e)(4) of the Real Property Article, to award a penalty, as requested by the Complainants, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Respondents' conduct in wrongfully withholding all or part of the Complainants' security deposit, whether the Respondents acted in good faith, and any 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. Therefore, Complainants' request for treble damages is denied.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondent must pay the Complainants **\$5,995.00**, which sum represents the Complainants' security deposit (\$5,500.00), plus accrued interest (\$495.00).

Commissioner Jeffrey Slavin, Commissioner Charles Marschke, and Commissioner Mora Rogers, Panel Chairperson, unanimously concurred in the foregoing decision.

To comply with this Order, Respondents, T. Mpoy Kamulayi and Muleka Mubikayi, must forward to the Office of Landlord-Tenant Affairs, 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 Mark Lindsay and Carla Morris, in the amount of \$5,995.00.

The Respondents, T. Mpoy Kamulayi and Muleka Mubikayi, 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 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, 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.

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. Pursuant to Section 29-49 of the County Code, should the Respondents choose to appeal the Commission's Decision and Order, they must post a bond with the Circuit Court in the amount of the award (\$5,995.00) if a stay of enforcement of this Decision and Order is sought.

Mora Rogers, Panel Chairperson
Commission on Landlord-Tenant Affairs