

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

In the Matter of Kathleen Urban Complainant	
v.	Case No. 9221
Lewis I. and Susan Winarsky Rental Facility: 8310 Garland Avenue, Silver Spring, MD (License No. 017153) Respondents	

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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 29-14(a) and 29-38, and 29-40 of the Montgomery County Code, 1994 as amended (the "County Code"), and the Commission having considered the testimony and evidence and stipulations of record, it is, therefore, this 24th day of August, 1999, found, determined, and ordered as follows:

BACKGROUND

On July 10, 1998, Kathleen Urban (the "Complainant") former tenant at 8310 Garland Avenue, # 2 Silver Spring, MD (the "Property"), a licensed multi-family rental facility in Montgomery County, Maryland, filed a formal complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs (the "Department"), in which she alleged that Lewis I. and Susan Winarsky, owners of the Property (the "Respondents"), assessed unjust damages against her \$550.00 security deposit after the termination of her tenancy, in violation of Section 8-203, "Security Deposits," of the Real Property Article, Annotated Code of Maryland, 1996, as amended ("State Code"). Specifically, the Complainant asserts that some of the damages assessed by the Respondents were either pre-existing (broken door), or normal wear and tear (cleaning). She does not dispute the fact that she owes *pro rata* rent for the first week of May 1998, but does dispute the Respondents' withholding of nine (9) days rent @ \$20.11 per

day for the period May 1 to 9, 1998. The Complainant is requesting the return of her security deposit plus accrued interest, less \$110.00 *pro rata* rent for the first week in May 1998.

The Respondents, through their attorney Robert A. Plumb, Jr., contends that: (1) the Complainant gave less than the required thirty (30) day written notice to vacate the Property and she was charged *pro rata* rent in the amount of \$180.97 for the nine (9) days she occupied the Property in May 1998; (2) the Property was left in an unclean condition and, as a result, the subsequent tenants, Robin Myers and Raneesa Allen, were issued a rent credit of \$125.00 for cleaning the Property after they moved in; (3) the Complainant broke a bedroom door during her tenancy which was replaced at a cost of \$165.90; and (4) \$105.13, the balance of the Complainant's \$550.00 security deposit plus \$22.00 accrued interest were refunded to her on or about July 15, 1998.

On April 2, 1999, the Complainant amended her original complaint and requested that the Commission award her three (3) times the amount of her security deposit as a penalty (See page 50 of Commission's Exhibit No. 1), in addition to the remedy previously requested.

After determining that the complaint was not susceptible to conciliation, the Department duly referred this case to the Commission for review, and on April 6, 1999, the Commission voted to accept jurisdiction of the case and scheduled a public hearing, which commenced and concluded on May 12, 1999.

The record reflects that the parties were given proper notice of the hearing date and time. Present at the hearing and presenting testimony and evidence were Complainant Kathleen Urban, Respondent Lewis I. Winarsky on behalf of himself, Susan Winarsky, and Sky Properties, Inc., Complainant's witness, Lorri Mangum, and Respondents' witnesses, George Mader, maintenance man, and Don Myers, father of Robin Myers, one of the tenants who moved into the Property after the Complainant vacated. The Commissioners were William Devany, Mattie Ligon, and Mark Becker, Panel Chair.

Without objection from the Complainant or the Respondents, the Commission entered into the record of the hearing the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Complainant entered the following five (5) documents into evidence: (1) rent payment Receipt No. 085608 dated November 24, 1997, in the amount of \$380.00 (See Complainant's Exhibit No. C-1A); (2) rent payment Receipt No. 085613, dated December 30, 1997, in the amount of \$577.00 (See Complainant's Exhibit No. C-1B); (3) rent payment Receipt No. 085615, dated February 11, 1998, in the amount of \$1,500.00 (See Complainant's Exhibit No. C-1C); (4) canceled rent payment check No. 124, dated March 19, 1998, in the amount of \$85.63 (See Complainant's Exhibit No. C-1D); and (5) canceled rent payment check No. 148, dated April 17, 1998, in the amount of \$550.00 (See Complainant's Exhibit No. C-1E). The Respondents offered no exhibits.

Furthermore, the Commission extended the time period within which it would decide this matter pursuant to Section 29-40 of the County Code and Section 7.1 of Appendix L, "Regulations on Commission on Landlord-Tenant Affairs," of the County Code.

The Commission determines that the key issues in this case are:

1. Whether the receipt for the payment of the Complainant's security deposit, which is contained in the written Lease (See page 16 of Commission's Exhibit No. 1), contains language informing the Complainant of her right to receive from the Respondents a written list of all existing

damages and the procedure for requesting such a list, as required by Section 8-203 (c)(3) of the State Code;

2. Whether the receipt for the payment of the Complainant's security deposit, which is also contained in the Lease, contains language advising the Complainant of her right to be present for a final walkthrough inspection of the Property and the procedure for making such a request, as required by Section 8-203(g)(1) of the State Code.

3. Whether the Respondents failed to provide the Complainant with a written list of damages assessed against her security deposit within thirty (30) days after the termination of her tenancy, in violation of Section 8-203(h)(1) of the State Code;

4. Whether the Respondents assessed unjust charges against the Complainant's security deposit for damages and unpaid rent, in violation of Section 8-203(g)(1) and (2) of the State Code; and,

5. Whether the Respondents failed to refund any portion of the Complainant's security deposit, plus accrued interest, within forty-five (45) days after the termination of her tenancy, in violation of Section 8-203(f)(1) and (4) of the State Code.

FINDINGS OF FACTS

Based on a preponderance of the evidence and testimony, the Commission finds that:

1. On March 22, 1997, the Complainant and Respondent Lewis Winarsky entered into a one-year lease agreement (the "Lease") for the rental of the Property, which commenced on April 1, 1997, and expired on March 31, 1998, at the monthly rental rate of \$550.00.

2. The Complainant took possession of the Property on March 22, 1997, and paid *pro rata* rent of \$177.22 to the Respondents for the period March 22, 1997 to March 31, 1997.

3. The Complainant paid the Respondents a security deposit of \$550.00. Pursuant to the Lease, the security deposit was paid in two installments: \$225.00 on March 22, 1997, and \$225.00 on April 15, 1997.

4. After the initial lease term expired on March 31, 1998, the Complainant became a month-to-month tenant.

5. The Commission credits the testimony of the Complainant that during the second or third week of April 1998, she issued verbal notice to Respondent Lewis Winarsky of her intention to vacate the Property by April 30, 1998.

6. By a letter to the Complainant dated April 20, 1998 (See pages 5 and 6 of Commission's Exhibit No. 1), Respondent Lewis Winarsky confirmed his receipt of the Complainant's verbal notice to vacate and stated the following: "...under the terms of your lease agreement, you are obligated to provide thirty days advance notice of your intention to vacate the Property from the beginning of the month. Your notice was received today. The notice period will begin on May 1. You are obligated for the rent during the notice period; however, I will attempt to rent the Property during that time. Your obligation for the rent during that period will end if someone rents the Property during the notice period."

7. The Commission credits the undisputed testimony of the Complainant that she verbally requested that Respondent Lewis Winarsky grant her an extension until approximately the end of the first week of May 1998 to vacate the Property, and that he agreed.

8. The Complainant vacated the Property on Saturday, May 10, 1998, and did not pay any rent for the period May 1-10, 1998.

9. The Commission credits the testimony of Respondents' witness, Don Myers, that the subject Property was re-rented to his son Robin Myers and his son's girlfriend, Raneesa Allen, on May 10, 1998, the day the Complainant vacated. Based on the re-rental of the Property to Robin Myers and Raneesa Allen on May 10, 1998, the Commission finds that the Complainant's tenancy terminated as of May 9, 1998, and that she owes *pro rata* rent to the Respondents for the period May 1 to 9, 1998.

10. The Commission credits the testimony of Respondents' witness George Mader that the subject Property was cleaned and freshly painted prior to the commencement of the Complainant's tenancy, and that he did not view the Property after the Complainant vacated.

11. The Commission credits the testimony of the Complainant that she removed and discarded the bedroom entrance door in the Property because it was cracked and damaged beyond repair. The Commission is not persuaded by the Complainant's testimony that the subject door was cracked when she moved in, and finds therefore, that the Complainant damaged the bedroom entrance door during her tenancy and discarded it prior to vacating. The Commission further finds that the Respondents incurred actual expense, in the amount of \$123.95 (See Invoice at page 32 of Commission's Exhibit No. 1) to install a new bedroom door and lock on or about May 12, 1998.

12. The Commission credits the testimony of the Complainant that at the time she vacated the Property it was left in a broom clean condition with the exception of some "glow-in-the-dark stars" left attached to a wall. The Commission also credits the testimony of the Complainant's witness, Lorri Mangum, who testified that she viewed the Property at the time the Complainant vacated and that it was not dirty. Although Respondents' witness, Don Myers, testified at the hearing that he viewed the Property after his son moved in on May 10, 1998, and that the floors, kitchen cabinets, appliances and behind the radiators were dirty, and that he assisted his son in doing some of the cleaning, the Commission finds that the Property was not left in an unclean condition, beyond normal wear and tear, by the Complainant at the time she vacated.

13. Respondent Lewis Winarsky testified that he provided written notification to the Complainant in a timely manner regarding the charges levied against her security deposit after the termination of her tenancy. To support this contention, Mr. Winarsky cited an invoice from Sky Properties, dated June 15, 1998 (See page 4 of Commission's Exhibit No. 1), which itemized the charges assessed against the Complainant's security deposit. However, the Respondents failed to provide any probative evidence or testimony that the invoice was mailed to or received by the Complainant. Therefore, the Commission finds that the invoice was not mailed to or received by the Complainant within thirty (30) calendar days after she vacated the Property on May 10, 1998.

14. The Respondents issued to the Complainant a security deposit refund check, dated July 14, 1998, in the amount of \$105.13. This sum represented the Complainant's security deposit (\$550.00) plus accrued interest (\$22.00), less *pro rata* rent (\$180.97), the cost of cleaning the Property (\$120.00) and the cost incurred to replace a bedroom door (\$165.90).

15. The Commission finds that the Property was in compliance with the terms and conditions of paragraph 4 of the Lease, which required the Property to be left in broom clean condition when it is vacated (See page 15 of Commission's Exhibit No. 1).

CONCLUSIONS OF LAW

1. The Complainant failed to issue the Respondents the required thirty (30) days written notice of her intention to vacate the Property in accordance with paragraph 4 of the Lease. However, the Respondents' acknowledged receipt of the Complainant's verbal notice to vacate, subsequently agreed to extend the vacate date until May 10, 1998, and re-rented the Property as of May 10, 1998. Based on the Respondents' acceptance of the Complainant's verbal notice to vacate, their agreement to extend the vacate date until May 10, 1998, and the re-rental of the Property on May 10, 1998, the Complainant's tenancy terminated as of May 9, 1998. The Commission finds that the Complainant is liable to the Respondents for *pro rata* rent from May 1-9, 1998, the period she occupied the Property, in the amount of \$162.72, not the amount of \$180.97 assessed by the Respondents. The Commission calculates the rent as follows: \$550.00 monthly rent x 12 months = \$6,600.00 ÷ 365 days = \$18.08 daily rate x 9 days = \$162.72.

2. The Complainant damaged the Property beyond normal wear and tear during her tenancy by damaging and discarding the bedroom entrance door, and the Respondents incurred actual expense to replace the door in the amount of \$123.95, not the amount of \$165.90 assessed by the Respondents. Therefore, the Respondents' assessment of \$165.90 against the Complainant's security deposit constitutes a violation of Sections 8-203(g)(1) and (h)(1) of the State Code.

3. The receipt for payment of the Complainant's security deposit, which is contained at Paragraph 6 in the Lease (See page 16 of Commission's Exhibit no. 1) does not contain language informing the Complainant of her right to receive from the Respondents a written list of existing damages at the commencement of her tenancy or the procedure for making such a request, in violation of Section 8-203(c)(3) of the State Code. Therefore, pursuant to Section 8-203(d)(2) of the State Code, the Respondents are liable to the Complainant for threefold the amount of the security deposit, subject to a setoff for damages and unpaid rent which reasonably could be withheld under this section.

4. The receipt for payment of the Complainant's security deposit also does not contain language informing the Complainant of her right to be present for the final walkthrough inspection of the Property and the procedure for making this request, in violation of Section 8-203(g)(1) of the State Code. Therefore, pursuant to Section 8-203(g)(1) of the State Code, the Respondents have forfeited their right to withhold any part of the security deposit for damages.

5. The Respondents' failure to present to the Complainant by first-class mail, directed to her last known address within thirty (30) days after the termination of her tenancy, a written list of the damages claimed against her security deposit together with a statement of the cost actually incurred, constitutes a violation of Section 8-203(h)(1) of the State Code; and therefore, pursuant to Section 8-203(h)(2) of the State Code, the Respondents have forfeited their right to withhold any part of the security deposit for damages.

8. The Respondents' failure to handle and dispose of the Complainant's security deposit in accordance with the applicable provisions of the Lease and the State security deposit law has caused a defective tenancy.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs orders the Respondents to pay the Complainant **\$1,404.15** which sum represents threefold the amount of the security deposit (\$550.00 x 3 = \$1,650.00), plus accrued interest (\$22.00), less the amount previously refunded (\$105.13) and *pro rata* rent for 9 days (\$162.72).

The foregoing decision was concurred unanimously by Commissioners Mattie Ligon, William Devany and Mark Becker, Panel Chair.

To comply with this order, Respondents, Lewis I. and Susan Winarsky, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4 Floor, Rockville, Maryland 20850, within fifteen (15) calendar days of the date of this Decision and Order, a check payable to Kathleen Urban in the full amount of \$1,404.15.

You are hereby notified that Section 29-44 of the County Code declares that failure to comply with the Decision and Order is punishable by a \$500.00 Class A civil fine 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 you comply with this Order.

In addition to the issuance of a \$500.00 civil fine Class A violation, should the Commission determine that the Respondents have not, within fifteen (15) 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 the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Decision and Order, pursuant to the Maryland Rules governing administrative appeals.

Mark Becker, Commissioner

Commission on Landlord-Tenant Affairs