

Before the
Commission on Landlord-Tenant Affairs
for Montgomery County, Maryland

In the Matter of Michelle Lynne Disse Complainant	
v.	Case No. H-1172
Roger E. Herst, JRJ Partners Real Estate Rental Facility: 4511 Avondale Street, Bethesda, MD Respondent	

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DECISION AND ORDER

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland, pursuant to Sections 29-14A, 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 of record, it is, therefore, this 19th day of June, 1998, found, determined and ordered, as follows:

BACKGROUND

This matter arises out of a Complaint filed by Michelle Lynne Disse (the Complainant) on October 3, 1996, in which she alleged that she was a tenant at 4511 Avondale Street, Apartment 101, Bethesda, Maryland (the Apartment), an apartment unit within Avondale Apartments which are owned and managed by Roger E. Herst (the Respondent). The Complaint further alleged that the Complainant commenced to occupy the Apartment on or about June 3, 1995, and vacated the Apartment on May 31, 1996. According to the Complaint, after the Complainant vacated the Apartment, the Respondent failed to present her with a written list of damages claimed under '8-203(g)(1) of the Real Property Article, Annotated Code of Maryland, 1996, as amended (the State Code) together with a statement of costs actually incurred. This failure, according to the Complaint, constituted a violation of '8-203(h)(1) of the State Code. The Complaint further alleged that the Respondent failed to credit the security deposit with simple interest at the rate of 4% per annum in violation of '8-203(f)(1) of the State Code. Finally, the Complaint alleged that

after the termination of the tenancy, the Respondent improperly withheld the security deposit for repair of damages that were the result of ordinary wear and tear in violation of '8-203(g)(1) of the State Code, and that the Respondent, without a reasonable basis, failed to return the Complainant's security deposit plus accrued interest within forty- five (45) days after the termination of her tenancy, in violation of '8-203(f)(4) of the State Code.

This matter was heard by the Commission on January 13, 1998. 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 Chapter 29 of the County Code.

Both the Complainant, Michelle Lynne Disse, and the Respondent Roger E. Herst, were present. The Complainant called one witness, Coreena Karns, a friend who stayed at the Apartment from March through May 1996, who testified as to the condition of the Apartment at the time the Complainant vacated. The Respondent called one witness, Kathleen Adeyemo, manager of the Avondale Apartments, who testified regarding the infestation of fleas in the Apartment. Each of these four individuals testified under oath.

The Respondent testified that the Complainant's security deposit was properly withheld, and that the notice required by '8-203(h)(1) of the State Code was not sent because the Complainant did not leave her forwarding address or telephone number and therefore, he had no place to send the notice. He further testified that after the Complainant left the Apartment, the new occupant discovered that it was infested with fleas, and that the Apartment was treated on four (4) occasions by Womack Exterminators without success; ultimately, the carpet was replaced, and the cost of replacement was charged to the Complainant. Finally, the Respondent testified that when the Complainant contacted him on August 13, 1996, and provided her forwarding address, he sent the notice required by '8-203(h)(1) of the State Code. The Respondent acknowledged an error (3% versus 4%) in calculating the security deposit interest, but contended that the error was easily absorbed by the cost of the repairs to the Apartment.

Upon consideration of the testimony and documentary evidence submitted herein, including the photographs submitted by the Complainant, the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On June 3, 1995, the Complainant and the Respondent signed and entered into a one-year lease agreement for the rental of the Apartment.
2. On or about June 3, 1995, the Complainant paid the Respondent a security deposit in the amount of \$895.00. The receipt for the security deposit is contained in the lease agreement at paragraph No. 13 (at page 45 of Commission's Exhibit No. 1).
3. On or about March 30, 1996, the Complainant issued the Respondent a notice of her intention to quit and vacate the Apartment and terminate the lease as of June 1, 1996. The Respondent received the Complainant's notice without objection.
4. The Complainant vacated the Apartment on May 31, 1996.
5. The Complainant provided the Respondent with her new telephone number and forwarding address by memorandum dated May 31, 1996 (at page 41 Commission's Exhibit No. 1).

6. The Respondent did not present the Complainant with a written list of damages claimed against her security deposit or an itemized list of the costs actually incurred, by first class mail, directed to her last known address, within thirty (30) days after the termination of her tenancy.

CONCLUSIONS OF LAW

1. The Complainant's tenancy terminated on May 31, 1996.
2. The Respondent failed to comply with the requirements of '8-203(h)(1) of the State Code, by failing to issue the required notice within thirty (30) days after the termination of the Complainant's tenancy. The Respondent could have, at the very least, sent such notice to the Complainant at the Apartment which, according to the Respondent, was her last known address.
3. The Respondent forfeited any right he might have had to withhold any portion of the Complainant's security deposit by his failure to comply with '8-203(h)(1) of the State Code.
4. The Respondent failed to credit the Complainant's security deposit with simple interest at the rate of 4% per annum, in violation of '8-203(f)(1) of the State Code. The Complainant is entitled to the return of her entire security deposit, in the amount of \$895.00, plus accrued interest at the rate of 4% per annum accounting from June 3, 1995 until the date of this Order, which sum is \$107.40 (3 years @ 4% per year).
5. The Respondent, without a reasonable basis, failed to return the Complainant's security deposit plus accrued interest within forty-five (45) days after the termination of her tenancy, in violation of '8-203(f)(4) of the State Code.
6. The Respondent caused a defective tenancy by failing to handle and dispose of the Complainant's security deposit in accordance with the requirements of '8-203 of the State Code.
7. The Commission is authorized under the State Code to award up to threefold of the amount wrongfully withheld. Based upon Respondent's failure to send the required notice and his unreasonable withholding of Complainant's security deposit, Respondent must pay an additional \$100.00 to the Complainant as a penalty.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders the Respondent to pay the Complainant \$1,102.40, which sum represents the Complainant's security deposit (\$895.00) plus three (3) years accrued simple interest (\$107.40) and a penalty of \$100.00.

The foregoing decision was concurred in unanimously by Commissioners Gary Everngam, John Peterson and Martin L. Schnider, Panel Chair.

Should the Commission determine that the Respondent has not, within fifteen (15) calendar days of receipt of this Decision and Order, made a bona fide effort to comply with the terms of this Decision and Order, it may refer the matter to the County Attorney for enforcement.

The parties are hereby notified that Section 29-44 of the County Code declares that failure to comply with this Decision and Order shall be punishable by a civil fine Class A violation as set forth in Section 1-19 of the County Code.

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 Order, pursuant to the Maryland Rules governing administrative appeals.

Martin L. Schnider, Panel Chair
Commission on Landlord-Tenant Affairs