

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

In the Matter of Nadir Douaji and Norridine Chirchi Complainants	
v.	Case No. H-3722
Jeffrey Kent 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, pursuant to Sections 29-14A, 29-38, and 29-40 of the Montgomery County Code 1994, as amended ("the Code"), and the Commission having considered the testimony and evidence of record, it is, therefore, this 11th day of May, 1998, found, determined and ordered, as follows:

BACKGROUND

The Complaint herein was filed on May 9, 1997. The Tenant is seeking refund of a security deposit in the amount of \$1,195.00 which was paid upon execution of the lease for a single family house located at 3924 Ferrara Drive, Silver Spring, Maryland.

This matter was heard by the Commission on January 28, 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 Code. Both the complainant Nadir Douaji (hereafter "The Tenant"), and the Respondent Jeffrey Kent (hereafter "Landlord") were present. The Tenant called two witnesses, her husband, Allison Friloux, and Rosie McCray-Moody, an investigator with the Division of Housing and Code

Enforcement within the County Department of Housing and Community Affairs (the "Department"). Each of these four individuals testified under oath.

The key issue in this case is whether the Tenant is entitled to the return of a security deposit paid to the Landlord upon execution of the lease because, according to the Tenant, the premises were not in compliance with a County requirement that premises be in a clean, and sanitary condition when it is let to the Tenant.

There are certain material facts as to which there appears to be no dispute. The Landlord is the owner of the premises at issue, and in early 1997, he placed an ad in the Washington Post to rent out the premises, to which the Tenant responded. The Tenant visited the premises to view the same on or about March 22, 1997. There were a number of deficiencies in the premises at that time, which the Landlord acknowledged, and testified were caused by a prior tenant, who had filed for bankruptcy protection.

Nonetheless, on March 22, the Tenant executed a lease on behalf of herself and her cousin, Norridine Chirchi, who was not in the country at the time. The lease, on its face, set the commencement date as of April 24, 1997 and was set to expire on May 1, 1998. It was expected that the Tenant would move in around April 27, 1997.

The Tenant submitted into evidence photographs of most of the deficiencies listed in note 2 above and both she and Mr. Friloux testified that these accurately reflected conditions in the premises on March 22, when the first visit to the premises occurred, and on May 13, 1996, when they testified the photographs were taken. They testified further that the Landlord acknowledged the presence of these deficiencies and agreed to correct them before the move in date, but failed to do so. The Tenant also testified that she never moved into the house, because of the deficiencies.

The Landlord challenged the Tenant's contention that these photos accurately reflect the condition of the premises as of the date he provided the tenant with keys to the premises, May 9, 1998. He testified that he corrected most of the conditions by May 9, and insinuated that something must have transpired between May 9 and May 13 which caused the condition of the items shown to worsen. (With respect to some items, such as the lack of a smoke detector and the electrical outlet with wires protruding, he denied having any knowledge at all regarding these conditions). The Landlord submitted into evidence invoices from various contractors to evidence steps undertaken to clean the premises, and the carpets, and put them in a satisfactory condition. The Landlord also noted that the Lease, at Paragraph 6, provided that the premises were "accepted and rented" in "as-is" condition.

The parties apparently met at the premises on two occasions after March 22 to review the condition of the premises, and a separate meeting was held sometime between March 22 and May 9 between Mr. Friloux, and a friend of his, and the Landlord, to discuss conditions there. The Landlord did not deny that he agreed to correct the deficiencies, although he did testify that the Tenant agreed to undertake correction of some of the problems on the premises, and that he relied on this promise.

The Tenant also testified that due to the Landlord's failure to follow through on his promises after the various meetings described, she called the Department to request an inspection and ascertain her rights. That inspection was performed on May 13 by Ms. McCray-Moody, who prepared an inspection report which appears at pages 18-20 of Exhibit 1 (the Department's file in the case). This report lists a number of the deficiencies testified to, including, especially, a lack

of cleanliness, and the absence of a smoke detector at one location in the house where it is required.

The ultimate issue in this case is whether, assuming deficient conditions in fact existed in the premises and were not corrected as alleged by the Tenant, whether, under the circumstances present here, the Tenant was within her rights to refuse to perform under the lease and demand return of the security deposit.

Here, the determination of this issue is dependent on the interpretation and application of specific statutory and regulatory provisions, and the specific facts of this case.

Section 26-8 (k) of the Montgomery County Code provides that "No owner or operator shall occupy or initially let to any other occupant any vacant dwelling or rooming unit unless it is "clean, sanitary, and fit for human occupancy." Section 29-26 (n) of the Code provides that each lease for a rental facility located in Montgomery County must "contain a covenant that the landlord will deliver the leased premises and all common areas in a clean, safe, and sanitary condition, free of rodents and vermin, and in complete compliance with all applicable laws." (The lease in this case did not have such a provision). See, also, Code Sec. 29-30 (a)(1), which requires landlords to comply with all applicable provisions of any federal, state or county statute, code, regulation or ordinance governing the maintenance of the dwelling unit and rental facility."

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

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FINDINGS OF FACT

(1) On March 22, 1997, the Tenant and the Landlord entered into a lease for the single family house at 3824 Ferrara Drive, Silver Spring, Maryland.

(2) The lease commencement date was April 24 1997, and the expiration date was May 1, 1998. It was anticipated by the parties that the Tenant would take occupancy on or about April 27, 1997.

(3) The Tenant paid to the Landlord a security deposit of \$1,195.00 on March 22, 1997, when she signed the Lease.

(4) Prior to execution of the lease, the Tenant inspected the premises and observed numerous deficiencies described in Note 1 above. The Landlord acknowledged these deficiencies and agreed to correct them.

(5) The lease did not contain the clause required by County Code 25-26 (n). (The clause is recited above).

(6) The conditions reflected in the inspection report at pages 18 to 20 of Exhibit 1 (the Commission file), and in the photographs submitted into evidence, fairly and accurately represent the condition of the premises as of the scheduled move in date (April 27) and as of May 13, 1997, when Ms. McCray-Moody performed her inspection and the photographs were taken. The premises were neither clean nor sanitary when the Tenant's occupancy was scheduled to begin, despite some efforts by the Landlord to correct the conditions stated.

- (7) Paragraph 25 of the lease required the Landlord to install working smoke detectors.
- (8) The premises lacked a smoke detector near a stairway on the first floor, and electrical wires protruded from an uncovered electrical outlet. The carpets were torn in some places, creating a trip hazard.
- (9) The Tenant never took possession of the premises.

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CONCLUSIONS OF LAW

- (1) The Landlord failed to meet the requirement of Montgomery County Code Section 26-8 (k), in that when the premises were let and scheduled for occupancy, they were not "clean or sanitary."
- (2) The lack of a smoke detector near the stairway near the kitchen was a violation of Code 26-21. The protrusion of wires from an outlet violated Code 26-6. The torn carpets, because of the trip hazard, is a violation of Code 26-8.
- (3) Because of the foregoing, there was a defective tenancy, and the Tenant was within her rights to Terminate her lease.

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CONCLUSION

The Commission accepts that the Landlord undertook some efforts to fulfill his promise to correct deficiencies evident upon the various inspections of the house by the Tenant. Yet there is substantial evidence that many areas of the house were not made clean and sanitary. Further, as noted certain Code requirements were apparently never complied with. While on their face, some of the deficiencies in the house may seem to be fairly minor and readily corrected, the fact is that, despite more than ample time, they were not corrected by the Landlord. Taken together with the overall lack of cleanliness in the premises and certain specific safety violations cited, we believe the Tenant was justified in not moving in.

The house was apparently vacant a substantial period of time after the prior tenants' occupancy and, therefore, the Landlord had ample time to put it in a more habitable condition before he let it to the tenant, much less between the time the lease was signed and the scheduled move in date.

We do not, by this holding, rule that if there are code violations in a premises at the time the lease is executed, or when a tenant moves in, that the lease is automatically void or that the tenant has an automatic right to cancel the lease and refuse to move in. Each case must be judged on its own facts. Factors to be considered are the nature, the number, and the severity of code violations, how long any code violations have existed, whether the landlord has notice of the violations and has been given a reasonable opportunity to cure them, and whether a tenant who may have taken possession of premises despite code violations (which technically is a violation of the Code) grants the landlord access to correct the violations. Ultimately, however, code violations must be substantially corrected before a tenant may be allowed to take occupancy of the premises, and, irrespective of any discussions or arrangements between the landlord and

tenant regarding the tenant's undertaking responsibility to correct violations, the landlord is responsible under the County Code if occupancy is permitted before the violations are corrected.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders the Respondent to pay the Complainant \$1,208.70, which sum represents the Complainant's security deposit (\$1,185.00) plus 11 months accrued simple interest in the amount of \$23.70.

The foregoing decision was concurred in unanimously by Commissioners Gary Everngam, Gary Guy and Roger Luchs, 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 Montgomery County Code 1994, as amended, 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 Montgomery County Code 1994, as amended.

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.

Roger Luchs, Panel Chairperson
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