

Before the

# Commission on Landlord-Tenant Affairs

for Montgomery County, Maryland

<b>In the Matter of</b>  Barbara Wetherell  <b>Complainant</b>	
v.	<i>Case No. 4546</i>
Chander and Ashima Kant  Rental Facility: 13110 Mica Court, Silver Spring, Maryland - License #014848  <b>Respondent</b>	

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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 29-14A, 29-38, and 29-40 of the Montgomery County Code 1994, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 16th day of December, 1998, found, determined, and ordered, as follows:

## **BACKGROUND**

On July 18, 1997, Barbara Wetherell (the Complainant), then tenant at 13110 Mica Court, Silver Spring, Maryland, (the Property), a licensed single-family rental facility in Montgomery County, MD, owned by Chander and Ashima Kant, (the Respondents), 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 the Respondents: (1) failed to deliver the Property to her at the commencement of her tenancy, May 15, 1997, in compliance with all applicable laws, in violation of Section 29-26(n), Landlord-Tenant Relations, Montgomery County Code, 1994, as amended (County Code); (2) failed to make needed and necessary repairs to the Property in a timely and workmanlike manner, in violation of Chapter 26, Housing and Building Maintenance Standards, of the County Code ("Housing Code") and Section 29-30(a) of the County Code, which reduced the value of her leasehold; (3) issued her a notice to quit and vacate the Property in retaliation for making requests for repairs, in violation of Section 29-30B(b) of the County Code; and (4) failed to make repairs and attempted to evict her from the Property without cause.

Specifically, the Complainant asserted in her complaint that:

1. At the commencement of her tenancy the Property was not in compliance with the Housing Code due to the following defects and deficiencies: leaking kitchen faucet, defective and leaking washing machine, insufficient hot water, defective garage door mechanism and a rotted, deteriorated perimeter fence surrounding the rear yard of the Property. The Complainant further asserted that these deficiencies were known to the Respondents at the time she signed the lease and took possession of the Property;
2. She repeatedly notified the Respondents verbally and in writing of the above-referenced defects and requested that they be repaired. However, the Respondents failed to make the repairs in a timely manner which substantially breached her lease and reduced the value of her leasehold;
3. On July 3, 1997, in response to her verbal and written requests for repairs, the Respondents issued her a notice to Quit and Vacate the Property by August 31, 1997, because "We find your following conduct improper and objectionable: A. Accepting the Property as-is, and then insisting we pay \$750 in improvement... B. Making Exaggerated or False or Contradictory Assertions of Defects/Needed Repairs...C.

Signing Debit-Slips for our Credit Card without Taking [sic] our Approval." This notice and other actions by the Respondents were retaliatory and constituted an attempt to evict her from the Property rather than make repairs; and

4. The Respondents have demonstrated a pattern of retaliatory practice and conduct by taking or attempting to take similar actions against other similarly situated tenants, specifically Don White (Department's Case No. H-1584) the tenant who occupied the Property immediately prior to her, and Jill Luksic and Alexis Sidwell (Department's Case Nos. 2149 and 6305), former tenants at 4002 Norbeck Square Drive, Rockville, MD, another single-family Rental Facility in Montgomery County, MD owned by the Respondents.

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### **AMENDED COMPLAINT**

On October 31, 1997, the Complainant amended her complaint (See pages 76-80 of Commission's Exhibit No. 1) to allege, in addition to other complaints previously asserted, that the Respondents harassed her by filing baseless complaints against her in the District Court of Maryland and attempted to coerce her into amending the lease, in violation of Section 29-30B (b), "Prohibited retaliatory practices," of the County Code, and Section 8-206(b)(1), "Retaliatory evictions in Montgomery County," of the Real Property Article, Annotated Code of Maryland, 1996, as amended ("State Code").

Specifically, the Complainant asserted in her amended complaint that:

1. On September 15, 1997, the Respondents filed a "Complaint Against a Tenant Holding Over" against her in the District Court of Maryland, Case No. 2473497, that had no merit and was retaliatory; that she appeared in District Court on October 22, 1997, with an attorney and three witnesses but the Respondents failed to appear and therefore, Judge C.J. Vaughey dismissed the complaint and advised her to file a complaint against the Respondents for retaliatory conduct.

2. On or about October 22, 1997, the Respondents filed a request for a continuance of Case No. 2473497 which was granted by the court, and the case was rescheduled for October 29, 1997, at which time the Respondents were represented by an attorney; again Judge Vaughey dismissed the complaint.

3. In an effort to get Respondents to make needed repairs, she was required to write them at least 22 letters and make at least 112 telephone calls, many of them long distance, to the Respondents, consuming many hours of her time; and,
4. Respondents failure to make repairs to the Property and their attempts to evict her prior to the expiration of the lease term constituted a violation of her right of quiet enjoyment and use of the Property and a substantial breach of the lease.

### **RELIEF SOUGHT**

The Complainant is seeking an order from the Commission directing the Respondents to:

1. Terminate her lease as of May 31, 1998, and refund her entire security deposit, \$1,400.00, plus accrued interest, \$56.00, at that time;
2. Pay her \$1,935.00 in attorneys fees she incurred to defend herself against the Respondents' retaliatory actions;
3. A refund of a portion of monthly rent she paid to the Respondents based upon the condition of the Property when she moved in, May 26, 1997, and the diminished value of the leasehold resulting from the Respondents' failure to make needed and necessary repairs in a timely manner during her entire tenancy;
4. Pay her for lost time at work, \$837.00 (27 hours @ \$31.00 an hour); postage, \$4.44; long distance telephone bills, \$4.61; courier expenses to deliver subpoenas, \$17.00; travel expenses, \$17.64 (56 miles @ 31.5 cents a mile); and photocopying costs, \$7.80 (78 pages @ 10 cents a page) for a total of \$888.49; and,
5. Pay her for relocation and moving expenses based on the Respondents' breach of lease which has denied her the opportunity to exercise the one-year renewal option in the lease.

After determining that the matter was not susceptible to conciliation, the Department duly referred the above-named case to the Commission for review. On November 4, 1997, the Commission determined to hold a public hearing which was originally scheduled to be heard on February 24, 1998. However, based on a timely request by the Respondents' then attorney, Jeffrey T. Brown, a postponement was granted, and

the hearing was re-scheduled for May 12, 1998. The parties were properly notified of the postponement and the re-scheduled hearing date.

On May 11, 1998, the day before the re-scheduled hearing, the Respondents' attorney, Mr. Brown, again requested that the public hearing be postponed, "...due to the unavailability of witnesses for whom subpoenas were issued." On May 11, 1998, the Commission advised the Respondents and their attorney that their request for a postponement had been denied<sup>1</sup> and the hearing would take place as scheduled on May 12, 1998.

On May 12, 1998, the date of this hearing, the Respondents faxed a letter to the Commission which stated that Mr. Brown no longer represented them in this matter, and they requested a postponement, "...for two months for our new attorney (which we hope to find soon) to prepare for this hearing." On May 12, 1998, the Commission denied Respondents' request for a postponement because it was their second request and it was not filed timely.

The hearing commenced on May 12, 1998, and concluded on that date. Present at the hearing and offering testimony and evidence were the Complainant, Barbara Wetherell, two witnesses she called, Dr. Lytitia Shea and Don White, and three witnesses called by the Commission, Inspectors Steve Morris and John Whitt, from the Department's Division of Housing and Code Enforcement, and Michael Denney, Investigator, from the Department's Office of Landlord-Tenant Affairs. The Respondents failed to appear at the hearing although both were properly notified, and no one appeared on their behalf. Also present was Steve Jacoby, Inspector, Allied Realty, a witness summoned by the Respondents. Mr. Jacoby was not called to testify by either the Complainant or the Commission and therefore, he was dismissed.

The Commission determined to leave the record of the hearing open for not more than 30 days, or until such time as the Complainant submitted additional evidence regarding damages she was claiming against the Respondents. On May 22, 1998, while the record remained open, the Complainant submitted the following documents which were entered into the record of this hearing:

1. A letter dated May 22, 1998, from the Complainant to Investigator Michael Denney, marked as Complainant's Exhibit No. C-14;
2. A list of Complainant's Estimated Moving Costs, in the amount of \$1,490.00, marked as Complainant's Exhibit No. C-15;

3. An estimate from Curtis & Sons Moving Company, in the amount of \$700.00, and a receipt for packing tape from CVS Pharmacy in the amount of \$16.74, marked as Complainant's Exhibit No. C-16; and,

4. A letter dated May 22, 1998, from the Complainant to Joe Giloley, Division of Consumer Affairs, marked as Complainant's Exhibit No. C-17.

On May 26, 1998, while the record remained open, the Complainant submitted the following documents which were also entered into the record of this hearing:

1. A letter dated May 26, 1998, from the Complainant to Investigator Michael Denney with an attached "Application For Leave" slip, marked as Complainant's Exhibit No. C-18;

2. A letter dated October 9, 1997, from Complainant's neighbors addressed to "Whom it may concern," marked as Complainant's Exhibit No. C-19: and,

3. A bill for legal fees from her attorney, Danielle L.C. Beach, in the amount of \$1,935.00, marked as Complainant's Exhibit No. C-20.

The record of this hearing closed on May 26, 1998.

Without objection at the hearing, the Commission entered into the record of the hearing the case file for the Property compiled by the Department, identified as Commission'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 Chapter 29 of the County Code.

### **FINDINGS OF FACT**

Based on the testimony and evidence of record, the Commission makes the following findings of fact:

1. The Respondents, Chander and Ashima Kant, are the owners of 13110 Mica Court, Silver Spring, MD, a licensed single-family Rental Facility in Montgomery County, MD.

2. The Respondents failed to appear at the hearing although both received proper notification of the hearing, and were properly summoned to appear.

3. On April 18, 1997, the Complainant and Respondents' then leasing agent, Coldwell Bankers Realty Pros, signed and entered into a one-year and two week lease agreement for the rental of the Property (the "Lease"), which commenced on May 15, 1997, and expired on May 31, 1998. Paragraph 38 of the Lease, "Additional Provisions," states, "Tenant has right to extend lease for an additional 12 months rent at 1,450 [sic] a month." (See page 42 of Commission's Exhibit No. 1).

4. On or about April 18, 1997, the Complainant paid the Respondents a security deposit in the amount of \$1,400.00. The receipt for the security deposit is contained at paragraph 3, "Security Deposit," of the Lease.

5. The Respondents, who live at 19 Birchwood Drive, Short Hills, NJ 07078, manage the Property themselves and do not employ the services of a property management company located in Montgomery County, MD.

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#### Defective Fence

6. The Complainant moved into the Property on May 26, 1997. Approximately two weeks later she contacted the Respondents by telephone regarding the following deficiencies in the Property: (a) the faucet in the kitchen was leaking, (b) the washing machine had a water leak, (c) the garage door mechanism was defective, (d) the water heater did not provide sufficient hot water and, (e) the perimeter fence surrounding the rear yard of the Property was in disrepair. In support of her testimony, the Complainant entered into the record of the hearing four photographs of the subject fence (See Complainant's Exhibits Nos. C-3, A to D) that fairly and accurately depict its condition during her tenancy.

7. The Commission credits the testimony of the Complainant that the main reason she decided to rent the Property was that it had a large fenced-in rear yard that would allow her large, 63 pound mixed-breed, female German Shepherd dog<sup>2</sup> to roam freely during the day when she was at work and eliminate the need to walk it on a regular basis, and that the deteriorated condition of fence caused her to be unable to allow her dog to be left unattended in the yard, and the wire sections of the fence with exposed rusted and sharp metal edges and the rotted wood rails, constituted a threat to the

health and safety of the Complainant, her guests, neighbors and others on the Property.

8. The Commission also credits the testimony of Complainant's witness Don White that he was the tenant in the Property from approximately February 1995 to November 1996 prior to the Complainant's tenancy, and that the subject fence was in disrepair during his entire tenancy. In support of Mr. White's testimony, the Complainant entered into the record a Notice of Violation dated October 7, 1996 (See Complainant's Exhibit No. C-4), issued by Department's Inspector Ronald J. Feaster to the Respondents which ordered them, in addition to other violations cited, to "Replace the deteriorated wood sections of fencing in a proper manner. The fence must be kept in good condition at all times."

9. In response to her request for repairs, the Respondents advised the Complainant to get estimates. By a letter dated June 26, 1997 (See pages 6-7 of Commission's Exhibit No. 1) the Complainant provided the Respondents with the requested estimates, offered, "...in the spirit of goodwill and partnership,.." to share the cost of fence repairs and advised them, regarding the fence, that:

"The wire is very rusty all around and doesn't reach the ground in some places and has poorly patched holes in several others. The rusted wire has broken in numerous places, leaving sharp pieces of rusty metal jutting out where it could cut my dog or poke an eye out. (I went around the fence removing many of the worst of the jutting wire pieces, but I didn't get them all. And as rusty and weak as the wire is, it doesn't take much pressure against it to break it in new spots.) I am not comfortable leaving my dog untended [sic] in the yard with the fence in that condition, and the fenced yard was my whole reason for choosing the house."

10. The Respondents failed to respond to the Complainant's June 26th letter with repair estimates and her offer to share the repair costs.

11. The Commission credits the testimony of Complainant's witness Dr. Lytitia Shea, a pediatric care physician, that: (a) she has been the owner of 13112 Mica Court, the property next door to and abutting 13110 Mica Court since June 1996; (b) the subject fence at Respondents' Property has been in disrepair since the time she moved in; and (c) she sent the Respondents a letter dated August 19, 1997 (See page 19 of Commission's Exhibit No. 1) advising them that, "...the fence adjoining my yard is in disrepair. Many of the pieces of wood are rotting and the wire fence is inadequate to prevent the dogs from going into the other neighbor's yard. Last fall, I did see a workman replacing a few boards and some wire. Obviously, this makeshift job was not sufficient to adequately repair the fence."

12. Based on the Respondents' failure to repair the subject fence, the Complainant filed a complaint with the Department's Division of Housing and Code Enforcement. On October 16, 1997, the Department's Inspector Morris inspected the rear yard fence at the Property, and on October 21, 1997, he issued a Notice of Violation to the Respondents (See Commission's Exhibit No. 2) which ordered them to do the following by November 21, 1997: (a) repair or replace the sections of deteriorated split rail fence and post in the backyard; (b) repair or replace the deteriorated metal wire around the fence in the backyard; and (c) make the concrete slab that the air conditioner sits on level and true.

13. The Commission credits the testimony of Inspector Morris that two extensions of the November 21st completion deadline were granted by the Department at the request of the Respondents—the first until January 1, 1998, and the second until January 26, 1998. Inspector Morris conducted a reinspection of the Property on January 26, 1998, which revealed that the fence repairs had not been made, and as a result, he issued two Class A civil citations to the Respondents for non-compliance with the County's Housing Code. In support of his testimony, Inspector Morris submitted into evidence at the hearing 15 photographs (See Commission's Exhibit Nos. 3C to 3Q), which fairly and accurately depict the condition of the subject fence on January 26, 1998.

14. The Commission credits the testimony of the Complainant that the fence repairs ordered by the Department were not made by the Respondents until April 24, 1998.

15. The Commission finds that: (a) the rear perimeter fence of the Property was in disrepair at the time the Complainant took possession of the Property, May 26, 1997, and in violation of Chapter 26 of the County Code and Paragraph 9, "Maintenance,"<sup>3</sup> of the Lease (See pages 38 and 39 of Commission's Exhibit No. 1); (b) the Complainant promptly notified the Respondents of this condition pursuant to her obligation under the terms of the Lease (See Paragraph 9 of the Lease at page 38 of Commission's Exhibit No. 1); (c) the defective and deteriorated fence constituted a threat to the health and safety of the Complainant, her guests, neighbors and others on the Property; and (d) Respondents were repeatedly put on notice of the defective fence by the Department and by the Complainant, and failed to repair the subject fence until April 24, 1998, eleven (11) months after the Complainant moved into the Property and requested the repairs, and nineteen (19) months after they were first cited by the Department.

#### Defective Washing Machine and Clothes Dryer

16. The Commission credits the testimony of the Complainant's witness Don White that: (a) on May 2, 1996, while he was the tenant in the Property, the Maytag clothes dryer stopped working; (b) he notified Respondent Ashima Kant by telephone on that date and advised her, based on his experience as a former Maytag employee, that the heating element was defective and needed to be replaced; and, (c) on May 3, 1996, he sent a letter to the Respondents (See Complainant's Exhibit No. 5) advising them that "...we have decided to purchase our own dryer and when we move we will take our new dryer and leave the broken Maytag, model #DE309, serial #733634 AL."

17. The Commission credits the testimony of the Complainant that at the time she took possession of the Property, May 26, 1997, the washing machine was leaking water and the clothes dryer, although working, did not generate sufficient heat to dry wet clothes. She promptly notified the Respondents by telephone of these defects pursuant to her obligation under the terms of the Lease<sup>4</sup>, and was instructed by the Respondents to contact a repairman, which she did. In support of her testimony, the Complainant entered into evidence at the hearing two documents: (a) a Service Order from Sears Product Service dated June 13, 1997 (See Complainant's Exhibit No. C-9A), which states at Technician's Comments: "Found hot and cold water lines reversed/instruct customer] need plumber," and (b) a Service Call from Washington Gas dated June 30, 1997 (See Complainant's Exhibit No. C-9B), which states at Service Technician Remarks: "50 Gal tank burner does not come on soon enough referred to plumber to check DIP tube and thermostat."

18. The Commission credits the testimony of the Complainant that the leaking kitchen faucet and the defective washing machine were repaired on June 13, 1997.

19. The Commission credits the testimony of Complainant's witness Dr. Shea that in the absence of the Complainant who was on vacation, in mid-August 1997, she conducted an inspection of the Property with Respondent Chander Kant during which he placed a wet towel in the clothes dryer to see if it was working properly; the towel did not dry after two hours of continuous operation.

20. The Commission notes that by a letter dated February 4, 1998 (See page 107 of Commission's Exhibit No. 1), in response to notification of defects in the Property, the Respondent, Chander Kant, advised the Complainant regarding the defective clothes dryer and dishwasher that:

"In view of your past false claims of needed repairs, I have no faith in your allegations of any new defects. Similarly, I am amazed the Whirlpool factory- authorized repairer reported in his October 17, 1997-report that the dryer vent was clogged and the vent hood was crushed. During my visit to the property on 11/11/97, I did not find these defects in the dryer vent and the vent hood. Did you persuade the repairer to write a

false report of defects? I would also like to put on record that I did not find anything wrong with the dishwasher when I was at the property on 11/11/97. In view of this false invoice sent by the Whirlpool repairer, I have no faith in any report by a repairer who writes his findings in your presence."

21. The Commission finds that: (a) clothes dryer at the Property at the time the Complainant took possession, May 26, 1997, was Maytag Model #DE309, Serial #733634 AL, the same clothes dryer that was reported defective by Mr. White on May 2, 1996, during his tenancy; (b) the clothes dryer was defective and not working properly at the commencement of the Complainant's tenancy; (c) the Respondents were put on notice of this problem by Mr. White (May 2, 1996) and promptly by the Complainant pursuant to her obligation under the terms of the Lease; (d) Respondents failed to repair or replace the defective clothes dryer until on or about October 2, 1997, four (4) months after the Complainant moved into the Property and requested the repair.

#### Defective Garage Door Mechanism

22. The Commission credits the testimony of the Complainant that: (a) at the time she took possession of the Property, May 26, 1997, the reverse or rebounding mechanism of the garage door was not working properly and the door hit her repairman Mike Izzo, and (b) she promptly notified the Respondents by telephone of this defect.

23. The Commission credits the testimony of the Complainant's witness Dr. Shea, that in mid-August 1997 in the company of Respondent Chander Kant and a garage door repairman, she personally inspected and tested the garage door at the Property to determine if the reverse mechanism worked properly and the door automatically rebounded. She found that the garage door did not rebound automatically, and she estimated that it would take 40 to 50 pounds of strength to reverse the door. She further testified that: (a) the American Academy of Pediatrics recommends placing a paper towel roll underneath an automatic garage door and the door should rebound before crushing the paper towel roll. However, Mr. Kant refused to perform such a test even after she advised him that there were three small children in the neighborhood and numerous dogs who could be injured by the defective door, however; Mr. Kant denied that the garage door was a problem.

24. The Commission finds that: (a) the reverse or rebound mechanism of garage door at the Property was defective at the time the Complainant took possession, May 26, 1997; (b) she properly notified the Respondents of this condition pursuant to her obligation under the terms of Lease; (c) Dr. Shea also notified the Respondents of this

condition; (d) the defective reverse or rebound mechanism of garage door constituted a threat to the health and safety of the Complainant, her guests, neighbors and others on the Property; and (e) the Respondents failed to repair or replace the defective garage door during the Complainant's tenancy.

### Defective Water Heater

25. The Commission credits the testimony of Mr. White that the Respondents installed a new, 50 gallon capacity water heater in the Property on May 24, 1995, during his tenancy.

26. The Commission credits the testimony of the Complainant that at the time she took possession of the Property, May 26, 1997, the water heater was defective and would not heat water quickly or to an appropriate temperature. She promptly notified the Respondents by telephone on or about June 11, 1997, of the defective water heater and was instructed by the Respondents to contact repairmen, which she did.

27. The Commission credits the testimony of the Complainant that on or about June 13, 1997, a Sears Service Technician took hot water temperature readings and tested the water heater and determined that it was installed improperly and did not produce sufficient hot water (See page 1 of Complainant's Exhibit No. 1). In support of her testimony, the Complainant entered into evidence at the hearing a Service Call from Washington Gas dated June 30, 1997 (See Complainant's Exhibit No. C9-B), which states at Service Technician Remarks: "50 Gal tank burner does not come on soon enough referred to plumber to check DIP tube and thermostat." The Complainant further testified that based on the Respondents' failure to replace or repair the water heater, she had its thermostat re-set on the highest setting, which produced adequate hot water.

28. The Commission also credits the testimony of Dr. Shea, that in mid-August 1997 she accompanied Respondent Chander Kant on an inspection of the Property and observed, at his request, that he filled the bathtub three-quarters full of hot water. She personally tested the water in the bathtub at that time and found that it was warm, not hot. She further testified that contrary to Mr. Kant's statement to the Complainant in his letter dated August 13, 1997, that the bathtub had been filled twice during the inspection (See page 16 of Commission's Exhibit No. 1), she observed it being filled only once.

29. The Commission finds that although the water heater at the Property was defective at the time the Complainant took possession, May 26, 1997, a condition which she

properly reported to the Respondents who did not correct it, she remedied the problem herself by re-setting the thermostat.

### Defective Dishwasher

30. The Commission credits the testimony of the Complainant that on November 11, 1997, she reported to Respondent Chander Kant that the dishwasher at the Property was "making all kinds of grinding horrid noise" and that he inspected the dishwasher on that date (See page 107 of Commission's Exhibit No. 1), and "...did not find anything wrong...;" rather, he told her to call him only when it completely stopped working.

31. By a letter dated January 30, 1998 (See page 105 of Commission's Exhibit No. 1), the Complainant reported to the Respondents that, "Finally, I once again call to your attention the fact that something is wrong with the dishwasher. I believe it is only a matter of time before that breaks, possibly damaging other property (like your floor and my dishes) and causing both of us greater than necessary expense."

32. The Commissions finds that the dishwasher in the Property was defective and not working properly from at least November 1997 to May 1998; the Complainant properly reported this condition to the Respondents on several occasions, both verbally and in writing, as is her obligation under the lease, and Respondents failed to repair or replace it. Instead, Respondent Chander Kant sent the Complainant a letter on February 4, 1998 (See page 107 of Commission's Exhibit No. 1 and Paragraph 22 above) accusing her of making false accusations regarding the need for repairs.

### Retaliatory Conduct

33. Approximately two weeks after moving into the Property, the Complainant contacted the Respondents by telephone regarding the existence of certain deficiencies in the Property (See Paragraph No. 6 above), and they advised her to get repair estimates, which she did.

34. By a letter dated June 26, 1997 (See pages 6-7 of Commission's Exhibit No. 1 and Findings of Fact No. 10 above) the Complainant provided the Respondents with the requested estimates for repair of the defective fence, faucet and garage door, and offered to share the cost of fence repairs. In addition, the Complainant's letter also advised the Respondents that, "Some of the windows stick so that I can't open them," and the clothes dryer "might need adjusting." The Complainant further advised the Respondents that she was making the following repairs or improvements to the Property at their own expense: purchasing new drip pans for the stove and a new mailbox, replacing a broken blind in the diningroom, repairing the refrigerator door and re-attaching a kitchen cabinet door handle. The letter also stated, "So I'm not asking you to repair or pay for every little thing I come across, even if it seems so."

35. By a letter dated July 3, 1997, approximately one week after she sent them the requested repair estimates, the Respondents issued the Complainant a notice to quit and vacate the Property "...on or before August 31, 1997 per Clause #20 of the Lease<sup>5</sup>. We find your following conduct improper and objectionable: A. Accepting the Property as-is, and then insisting we pay \$750 in improvement... B. Making Exaggerated or False or Contradictory Assertions of Defects/Needed Repairs...C. Signing Debit-Slips for our Credit Card without Taking [sic] our Approval."

36. The Complainant did not vacate the Property by August 31, 1997.

37. In response to the Respondents' notice to vacate, on July 18, 1997, the Complainant filed a formal complaint with the Department.

38. By a letter dated August 13, 1997 (See page 16 of Commission's Exhibit No. 1) the Respondents notified the Complainant that they had visited the Property to investigate her allegations and stated in the letter, "Basically, our conclusion that you have been making false accusations was confirmed." In addition to stating that no problems existed, the Respondents also demanded that the Complainant remit \$312.00 for, "The damages suffered by us due to your false claim of needed repairs..." The damages included travel expenses from New Jersey, meals on the road and repairs to the water heater and garage door.

39. By a letter dated October 1, 1997 (See pages 23-25 of Commission's Exhibit No. 1) Investigator John Whitt notified the Respondents that their July 3rd notice to quit and vacate to the Complainant was issued in response to her request for repairs and was therefore retaliatory<sup>6</sup> and must be rescinded. The Respondents did not rescind the notice.

40. The Commission credits the testimony of Investigator Whitt that his investigation found no evidence that the Complainant had ever made any untrue statements regarding defects in the Property or acted improperly in any way.

41. The Respondents' July 3rd notice to quit and vacate issued to the Complainant was retaliatory. The Commission finds that the Complainant's request to the Respondents for repairs was not only reasonable, but that she had an obligation to report such defects to the Respondents pursuant to Paragraph No. 9, sub-paragraph four of the lease,<sup>7</sup> and therefore, her conduct was neither objectionable nor improper.

42. The Respondents failed to rescind the July 3rd notice to quit and vacate, and instead on September 15, 1997, filed a "Complaint Against a Tenant Holding Over" against the Complainant in the District Court of Maryland, Case No. 2473497, which was dismissed on October 22, 1997, based on the Respondents' failure to appear. The Respondents then filed a request for a continuance which was granted, and the case was rescheduled for October 29, 1997, at which time the complaint was again dismissed.

43. The Commission credits the testimony of the Complainant that the Respondents filed an appeal of the District Court's dismissal of the above-referenced complaint which was scheduled to be heard in the Circuit Court on May 19, 1998. While the record of this proceeding remained open, by a letter dated May 22, 1998 (See Complainant's Exhibit No. C-14), the Complainant advised the Commission that based on the Respondents' failure to appear, the appeal was dismissed in the Circuit Court with prejudice.

44. The Complainant incurred actual expenses to respond to and defend herself against the Respondents' retaliatory actions and threats, itemized as follows:

Legal Fees \$1,935.00

Postage 4.44

Long distance telephone bills 4.61

Courier Expenses 17.00 (to deliver subpoenas)

Travel Expenses 17.64 (56 miles @ 31.5 cents a mile)

Photocopying Expenses 7.80 (78 pages @ 10 cents a page)

TOTAL \$1,986.49

## Pattern of Retaliatory Conduct

45. Regarding the Complainant's allegation that the Respondents' conduct towards her and other tenants at properties they own in Montgomery County, MD, constitutes a pattern of retaliatory conduct, the Commission credits the testimony of Complainant's witness Mr. White that during his tenancy the Respondents threatened to evict him for complaining about defects in the Property and for requesting repairs. As an example, Mr. White testified that the Respondent authorized a technician from Warner Electric to repair an attic fan in the Property and had given the technician a credit card number to charge the repair. However, when the technician attempted to charge the \$214.50 repair, the Respondents' credit card was refused, and Mr. White's wife used her personal credit card to pay for the work, which they deducted from their next month's rent. The Respondents then demanded payment from him for the repair and threatened to evict him if he did not pay.

46. In support of Mr. White's testimony, the Complainant entered into the record of the hearing a letter dated September 9, 1995 (See Complainant's Exhibit No. 7), from the Respondents to Mr. White which demanded payment of \$183.75 (\$214.50 attic fan repair, minus the \$39.50 deductible, plus a late fee of \$8.75). The September 9th letter also states: "I am also fed up with your repeated ordering of repairs unilaterally, and unilaterally deducting the amounts for 'repairs' from the rent due. I find this conduct objectionable and improper under clause #20 of the lease agreement. If I do not receive the amount of \$183.50 [sic] from you within ten days of the date of this letter, I will terminate this lease under clause #20, and will serve a notice on you to quit and vacate our house by October 31, 1995."

47. The Complainant testified, regarding an alleged pattern of retaliation, that the Respondents issued a similar notice to vacate to Jill Luksic and Alexis Sidwell, former tenants at 4002 Norbeck Drive, Rockville, MD, another property they own in Montgomery County, MD, in retaliation for their requesting repairs. In support of her testimony, the Complainant referenced a letter dated December 30, 1996, from the Respondents to Ms. Luksic and Ms. Sidwell (See pages 88-89 of Commission's Exhibit No. 1) which states, in pertinent part, "This is my formal notice to you to vacate our house on or before January 31, 1996 [sic] per clause #20 of the Lease. I find your following conduct improper and objectionable: (a) Not getting the water connection transferred to your name, and giving contradictory explanations for this failure; (b) Making Exaggerated or Completely False Assertions of Defects/Cleaning; (c) Not Permitting Access to Workers during Normal Business Hours; and (d) Alleged Leaky Toilets."

48. The Commission finds, based on the testimony of the Complainant and her witnesses, that the Department notified the Respondents that their December 30, 1996 notice to vacate issued to Jill Luksic and Alexis Sidwell was retaliatory and ordered the Respondents to rescind it, which they did.

49. On May 12, 1998, the Commission held a public hearing in the matter of Jill Luksic and Alexis Sidwell v. Chander and Ashima Kant, Case No. 6305, regarding the Respondents' handling and disposition of their security deposit after they vacated, and on November 16, 1998, issued its Decision and Order which found, in addition to security deposit violations, that Respondents had acted in a retaliatory manner against Ms. Luksic and Ms. Sidwell by issuing "...unfounded and unwarranted threats of future legal action against the Complainants in an effort to dissuade them from pursuing their complaint with the Commission, and the language contained in the endorsement section of Respondents' second security deposit refund check constitutes an attempt by the Respondents to coerce the Complainants into forfeiting their rights to pursue a claim against the Respondents with the Commission. These actions constitute a violation of Section 29-30B(b) of the County Code and caused a defective tenancy."<sup>8</sup>

50. While the record of this proceeding remained open, on May 26, 1998, the Complainant submitted a letter to the Commission, entered into the record as Complainant's Exhibit No. C-16, which states, in pertinent part, "I'm enclosing a copy of a letter of support from my neighbors...I believe this letter is relevant because Mr. Kant cited Clause 20 of the lease as his basis for telling me to get out, and that clause specifically addresses being an annoyance to the neighbors." The referenced letter, signed by four of the Complainant's neighbors, dated October 9, 1997, entered into the record as Complainant's Exhibit No. C-17, states, in pertinent part:

"Barbara Wetherell moved into the Snowden Mill's Community in July 1997. She currently rents a home from Mr. Kant that is situated on a cul-du-sac on Mica Court. We, her neighbors on that cul-du-sac, have become well acquainted with Ms. Wetherell. We will vouch for her character and credibility. Ms. Wetherell is a friendly, professional, hard-working woman who is well liked by us all. She is a quiet, compassionate, and caring individual...She is a very responsible neighbor who maintains her home and yard in a neat respectful manner," and "We have all been aware of the many problems tenants have had with Mr. Kant in the past. Barbara's problems with Mr. Kant mirror these past problems. Her requests to have items in or around the house fixed have appeared to be reasonable and appropriate. She is merely trying to maintain the home in a manner consistent with the norm. She has had difficulty getting problems addressed by Mr. Kant and having them solved," and "...We certainly hope the courts correct the actions of Mr. Kant in this situation. Many

of us have watched multiple tenants leave from this address because of Mr. Kant's behavior. We will be sad to lose another great neighbor if his actions continue."

51. The Commission finds that the Respondents' threats of eviction, notices to vacate issued to the Complainant, their repeated filings against the Complainant in the District Court and their failure to make necessary and required repairs to the Property were all retaliatory actions against the Complainant, and such actions constitute a pattern of retaliatory practice and behavior on the part of the Respondents.

### Breach of Lease

52. The subject lease agreement contains a provision allowing the Complainant to renew the lease for an additional one year period (See Findings of Fact No. 3 above). The Commission credits the testimony of the Complainant that she fully intended to renew the lease for a second year because of the size and location of the Property, the size of the yard, good neighbors and other amenities. However, based on the Respondents' failure to make needed and necessary repairs to the Property in a timely manner and their repeated attempts to evict her without reasonable cause, constituted a significant and substantial breach of the lease and caused her not to renew it for a second year.

53. By a letter dated March 29, 1998 (See page 182 of Commission's Exhibit No. 1) the Complainant issued the Respondents a notice of her intention to quit and vacate the Property as of May 31, 1998. The Complainant testified at the hearing that she would have preferred to exercise her option to extend the lease another year, but could not endure another year of the Respondents' behavior.

54. While the record of this proceeding remained open, by a letter dated May 22, 1998 (See Complainant's Exhibit No. C-16), the Complainant submitted a list of costs she has or will incur as a result of having to move from the Property on or about May 31, 1998, itemized as follows:

Mover's Fee \$ 700.00 (Estimate from Curtis & Sons Moving)

Packing Supplies 48.00

Utility Hook-Up Fees 183.00

New Checks with New Address 11.00

New Driver's License 20.00

Change Of Address Postage 20.00 (100 postcards @ 20 cents ea.)

TOTAL \$ 982.00

55. The Commission finds that the Respondents' attempt to evict the Complainant from the Property in retaliation for requesting repairs denied her quiet enjoyment of the Property and constitutes a significant and substantial breach of the lease agreement by the Respondents.

56. The Commission also finds that the Respondents' failure to respond to the Complainant's repeated verbal and written requests for maintenance and repairs to the Property, which is their obligation under the terms of the lease, even after being put on notice by the Department, constitutes a significant and substantial breach of the Complainant's lease.

57. The Respondents' retaliatory attempts to evict the Complainant based solely on her requests that they repair defects in the Property, constitutes a serious and egregious violation of Section 29-39B(b) of the County Code,<sup>9</sup> and has caused a defective tenancy.

### **CONCLUSIONS OF LAW**

Based upon a fair consideration of the testimony and evidence contained in the record, the Commission draws the following conclusions of law:

1. At the time the Complainant took possession of the Property, May 26, 1997, it was not in compliance with the Housing Code, and was therefore in violation of Section 29-26(n) of the County Code,<sup>10</sup> and this condition has caused a defective tenancy.

2. The Respondents' failure to make needed and necessary repairs and maintenance to the Property during the Complainant's tenancy after receiving sufficient notice from both the Complainant and the Department, constitutes a violation of the Housing Code, Section 29-30(a) of the County Code<sup>11</sup> and Paragraph 9, "Maintenance," of the lease, and has caused a defective tenancy.

3. The Respondents' failure to deliver the Property to the Complainant at the beginning of the lease term in compliance with all applicable laws and their failure to make needed and necessary repairs to the water heater, dishwasher, clothes dryer, garage door and especially their refusal to repair the rear yard fence which was one of the main reasons the Complainant decided to rent the Property, caused her non-use of those appliances during a portion of her tenancy and non-use of the rear yard for her entire tenancy, and combined to reduce the value of the leasehold for which the Complainant was paying rent by 15%.

4. The Commission concludes that the Respondents' threats of eviction, notices to vacate issued to the Complainant, repeated filings against the Complainant in the District Court and their failure to make necessary and required repairs to the Property were all retaliatory actions against the Complainant, in violation of Section 29-30B(b) of the County Code, and have caused a defective tenancy.

5. The Respondents' reliance on Paragraph 20, "Default," of the lease as the basis for issuing a notice to vacate to the Complainant was improper. Paragraph 20 of the lease deals with "objectionable or improper conduct" on the part of the tenant by "causing an annoyance to neighbors" or violation of rules and regulations promulgated by the landlord, Snowden Mills Homeowner Association (i.e. parking regulations) or a government agency (i.e. zoning regulations). The Respondents never asserted in any letters or notices issued to the Complainant that any such rules, if they exist, or regulations were violated. It is clear from the record and the testimony of the Complainant and her witnesses that she never caused an annoyance to her neighbors. In fact, quite the opposite is true, she was well liked by her neighbors on Mica Court.

6. Tenants in Montgomery County are guaranteed the right to complain to their landlords or the Department about defects in rental properties and to request that those defects be repaired in a timely manner without fear of retaliation or threat of eviction. Likewise, tenants have the right to file such complaints with the Commission. Furthermore, it is not only the obligation of the Complainant under the terms of the lease to report defects in the Property to the Respondents, but it is in the Respondents' best business interest that such defects are reported to prevent deterioration of the Property. The Complainant's requesting of repairs or filing a complaint against the Respondent is not "objectionable or improper conduct," and the Respondents cannot rely on this lease provision to try to evict the Complainant or any other tenant simply because they are "fed up" with complaints or do not want to make repairs.

7. The Respondents used these same retaliatory tactics and attempted to evict three other tenants who had filed complaints with the Department, Don White (Case No. H-1584) and Jill Luksic and Alexis Sidwell (Case No. 2149). In those cases the Respondents also cited Paragraph No. 20, "Default," of the lease as the reason for the

notice to vacate, but rescinded the notices after being notified by the Department that their reliance on Paragraph 20 of the lease as the basis for issuing a notice to vacate merely because a tenant complained of defects, was improper and retaliatory. The Commission is troubled by the fact that even after they had been put on notice by the Department regarding such notices as being retaliatory, the Respondents continued the practice by issuing such a notice to the Complainant.

The Commission concludes that the Respondents' were aware that their notice to vacate issued to the Complainant on July 3, 1997, for "objectionable and improper conduct" was retaliatory, in violation of Section 29-30B(b) of the County Code and Section 8-206(b)(1) of the State Code,<sup>12</sup> and they attempted to enforce it anyway. The Respondents' retaliatory actions and threats of eviction against the Complainant caused her to incur actual expense to respond to and defend herself against those actions and threats (See Findings of Fact No. 44 above), and she is entitled to recover those damages from the Respondents.<sup>13</sup>

9. The Commission further concludes that the Respondents' July 3, 1997, notice to quit and vacate issued to the Complainant is unenforceable. However, the issue of enforceability appears to be moot based on the reported District and Circuit actions dismissing the Respondents' complaints for repossession.

10. The Commission concludes that the Respondents' repeated failure to appear at hearings in the District Court on complaints they filed, and their issuance of threatening letters to the Complainant constitutes harassment, in violation of Section 29-30B(b) of the County Code, and has caused a defective tenancy.

11. The Commission concludes that although the Complainant lost time from work (27 hours @ \$31.00 an hour) to prepare for and attend court proceedings to defend herself against the Respondents' attempts to evict her from the Property and to meet repairmen at the Property, her claim for lost wages is beyond the scope and jurisdiction of the Commission.

12. The Commission concludes that the Respondents' attempts to evict the Complainant from the Property without sufficient cause and the issuance of threatening letters to her constitutes harassment and retaliatory practice and conduct by the Respondents, in violation of Section 29-30B(b) of the County Code. Furthermore, based on evidence presented at the hearing by the Complainant and her witnesses, the Respondents have used similar retaliatory tactics against other tenants (Don White and Jill Luksic and Alexis Sidwell), and it is clear that this conduct was intentional and it constitutes a pattern of retaliatory conduct and practice by the Respondents.

13. The Respondents' failure to make needed and necessary repairs to the Property and their attempts to evict the Complainant from the Property prior to the expiration of the lease, constitutes a significant and substantial breach of the lease which caused the Complainant not to exercise her option to renew the lease for a second year and to incur actual expense to re-locate to another Property. Based on this breach of lease, the Respondents are liable to the Complainant for the costs she incurred to move from the Property.

### **ORDER**

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders:

1. The lease agreement between the Respondents and the Complainant is hereby terminated as of May 31, 1998, and the Complainant owes no rent beyond that date.

2. The Respondents must refund to the Complainant her entire security deposit of \$1,400.00, plus 4% simple interest in the amount of \$56.00, in the total amount of **\$1,456.00**.

3. The Respondents must pay the Complainant **\$4,502.00**, which sum represents: (a) the costs she incurred to respond to and defend herself against the Respondents' retaliatory actions (\$1,000.00 in attorney's fees<sup>14</sup>); (b) the costs she incurred to relocate from the Property based on the Respondents' breach of lease (\$982.00); and (c) based on the reduced value of the leasehold, a refund of 15% of the \$1,400.00 monthly rent she paid to the Respondents during the 12 months she rented the Property (\$2,520.00).

4. The Respondents must not at any time henceforth issue a notice to vacate to any tenant at any property they own, operate or manage in Montgomery County based solely on the tenant's request for repairs or for filing a complaint with the Department or the Commission. Should the Commission determine that such notice has been issued, it will constitute non-compliance with this Order and is grounds for the

issuance of a Class A civil citation, in the amount of \$500.00, and the immediate revocation of any and all Rental Facility Licenses held by the Respondents.

5. For a period of 2 years from the date of this Order, the Respondents must submit to the Department for review and approval of form, prior to use or issuance, all lease agreements, notices to vacate and security deposit dispositions for any and all rental facilities they own, operate or manage in Montgomery County, MD. Failure to comply with this review and approval requirement constitutes non-compliance with this Order and is grounds for the issuance of a Class A civil citation, in the amount of \$500.00, and the immediate revocation of any and all Rental Facility Licenses held by the Respondents.

6. If any housing code violations are discovered at the Property as the result of inspections generated by complaints from tenants or by community residents, they must be corrected in accordance with the time-frames and instructions set forth by the Department. Failure to complete any repairs within the time-frames set by the Department constitutes non-compliance with this Order and is grounds for the issuance of a Class A civil citation, in the amount of \$500.00, and the immediate revocation of any and all Rental Facility Licenses held by the Respondents.

The foregoing decision was concurred in unanimously by Panel Chairperson Jonathan Smith and Commissioners Gary Guy and Roger Luchs.

Should the Commission determine that the parties have 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.

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Jonathan Smith, Panel Chairperson

Commission on Landlord -Tenant Affairs