

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

<p><b>In the Matter of</b></p> <p>Dave Prakash and Naomi Richman</p> <p><b>Complainants</b></p>	
<p>v.</p>	<b>Case No. 10591</b>
<p>John Burkett</p> <p>Rental Facility: 10304 Cherry Tree Lane, Silver Spring, Maryland (Rental License No. 36908)</p> <p><b>Respondent</b></p>	

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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 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 30th day of July, 2001, found, determined, and ordered, as follows:

**BACKGROUND**

On September 7, 2000, Dave Prakash and Naomi Richman, (the "Complainants"), former tenants at 10304 Cherry Tree Lane, Silver Spring, Maryland (the "Property"), a licensed single 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 they alleged John Burkett (the "Respondent"), owner of the Property: (1) failed to obtain a Rental Facility License prior to offering the Property for rent to them, as

required by Section 29-16, "Landlord-Tenant Relations," of the Montgomery County Code, 1994, as amended ("County Code"); (2) failed to deliver the Property to them at the commencement of the tenancy, in clean, safe and sanitary condition, in violation of Section 29-26(n) of the County Code, which caused them to prematurely terminate their tenancy; (3) charged them a security deposit in excess of the equivalent of two (2) months rent, in violation of § 8-203(b)(1) of the Real Property Article, Annotated Code of Maryland, 1999, as amended ("State Code"); (4) misrepresented his intention to live at the Property at the commencement of the tenancy; and (5) failed to return any portion of their security deposit within forty-five (45) days after the termination of their tenancy, in violation of § 8-203(e)(1) of the State Code.

Specifically, the Complainants assert that: (1) at the time they signed a lease with the Respondent, August 28, 2000, the Respondent agreed to clean the Property and make numerous needed and necessary repairs prior to their move-in date of September 1, 2000; (2) at the time they took possession of the Property, on September 1, 2000, it had not been cleaned, was in an unsanitary condition, and none of the repairs promised by the Respondent had been made; (3) after repeated complaints about the need for repairs to the Respondent went unheeded, on or about September 7, 2000, they verbally requested that the Respondent terminate the lease and return all monies previously paid; (4) the Respondent refused their request to terminate the lease and return any money, and he failed to vacate the basement of the Property at the time they took possession, as promised; (5) based on the Respondent's refusal to make repairs or terminate the lease, on or about September 30, 2000, they moved out of the Property; and (6) the Respondent failed to refund their security deposit (\$3,900.00) or September 2000 rent (\$1,300.00). The Complainants are seeking an Order from the Commission for the Respondent to pay them \$5,200.00, which sum represents the total amount of rent and security deposit paid to the Respondent and the Respondent's Real Estate Agent, Long & Foster Realty.

The Respondent failed to respond to the allegations raised by the Complainants in their complaint, failed to provide documentation requested by the Department as part of its investigation of those allegations, and failed to attend a scheduled mediation conference on October 17, 2000.

By correspondence dated April 11, 2001, the Complainants amended their complaint to request, in addition to an award of \$5,200.00, reimbursement for moving expenses in the amount of \$4,060.00. The Complainants further amended their complaint during the public hearing to request, in addition to a refund of rent and security deposit paid and moving expenses, reasonable attorneys fees.

After determining that the complaint was not susceptible to conciliation, the Department duly referred this case to the Commission for its review, and on May 1, 2001, the Commission voted to hold a public hearing. Notice of the hearing date and time was sent to the parties on May 10, 2001. The public hearing in the matter of Dave Prakash and Naomi Richman v. John Burkett, relative to Case No. 10591, commenced on June 12, 2001, and concluded on that date. The record of the hearing was left open until June 29, 2001, to allow Complainants' attorney, Julian Tepper, to submit a detailed invoice of his services and fees.

The Commission notes that Chapter 29 of the County Code, "Landlord-Tenant Relations," has been amended, and the amendments took effect as of April 1, 2001, prior to the public hearing in this matter. Section 29-19(e) of the County Code, entitled "Licensing Procedures," states, "Each licensee must give the Department a current address for the receipt of mail. If the Department sends first class or certified mail to the licensee at the designated address and the mail is returned as undeliverable, the Department may treat the mail as having been received." The Respondent licensed the Property as a Rental Facility on September 6, 2000, six days after the commencement of the Complainants' tenancy, and he designated his mailing address as 10304 Cherry Tree Lane, Silver Spring, MD from that date until October 6, 2000, at which time his mailing address would be 14 Woodmoor Drive, Silver Spring, MD.

The Respondent was sent notice, by regular and certified mail, to both the Property address, 10304 Cherry Tree Lane, Silver Spring, Maryland, and the mailing address he provided to the Department on September 6, 2000, as part of his application for a Rental Facility License, 14 Woodmoor Drive, Silver Spring, MD. A Summons and Statement of Charges was also issued to the Respondent by the Department on May 23, 2001, sent by both regular and certified mail, to the Property address, 10304 Cherry Tree Lane, Silver Spring, Maryland, and the mailing address the Respondent provided to the Department on September 6, 2000, as part of his application for a Rental Facility License, 14 Woodmoor Drive, Silver Spring, MD. The Summons sent by certified mail was returned to the Department as "Unclaimed" however, the Summons sent by Regular Mail was not returned.

The record reflects that the Complainants and the Respondent were given proper notice of the hearing date and time. Present at the hearing and presenting testimony and evidence were the Complainants, Dave Prakash and Naomi Richman, on behalf of themselves and co-tenant and lease signator, Pushpa Prakash, and one witness called by the Commission, the Department's Inspector, Bernard Marra. The Complainants were represented at the hearing by attorney Julian Tepper.

Without objection from the Complainants, the Commission entered into the record of the hearing the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Commission also accepted into evidence at the hearing 8 exhibits offered by the Complainants: photocopies of 4 money orders payable to the Respondent on August 24, 2000, in the total amount of \$2,600.00, with the notation "sec. deposit," identified as Complainants' Exhibit Nos. 1-4; photocopies for 4 pages from Complainant Naomi Richman's checking account register which reflect 2 checks paid to Long & Foster (Nos. 1251 and 1252), each in the amount of \$1,300.00, identified as Complainants' Exhibit Nos. 5 and 6; and 2 checks paid to the Respondent (Nos. 1254 and 1255), in the amount of \$1,500.00, identified as Complainants' Exhibit Nos. 7 and 8.

The Commission also accepted into evidence from Complainants' attorney, Julian Tepper, on June 26, 2001, a two-page summary of attorneys fees totaling \$3,300.00, identified as Commission's Exhibit No. 2. The public hearing record in this matter closed as of June 26, 2001.

## **FINDINGS OF FACT**

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

1. On August 28, 2000, the Complainants and the Respondent's Real Estate agent, Tammy Burns, Long & Foster Real Estate, Inc., entered into a one-year lease agreement for the rental of the Property (the "Lease"), which commenced on September 1, 2000, and was due to expire on August 31, 2001.
2. The amount of the monthly rent was \$1,300.00.
3. On August 28, 2000, the Complainants paid the Respondent a security deposit in the amount of \$2,600.00 (See Complainants' Exhibit Nos. 1-4), which sum is not in excess of the equivalent of two (2) months rent.

4. The Property was not licensed as a Rental Facility on August 28, 2000, the date the Lease was signed by the Complainants and the Respondent's Real Estate agent, Tammy Burns, in violation of Section 29-16 of the County Code.

5. The Lease does not contain a provision whereby the Respondent is obligated to deliver the Property and all common areas to the Complainants at the commencement of their tenancy in a clean, safe and sanitary condition, free of rodents and vermin, and in complete compliance with all applicable laws, as required by Section 29-26(n) of the County Code.

6. The Respondent failed to deliver the Property to the Complainants at the commencement of their tenancy, September 1, 2000, in a clean, safe and sanitary condition, and in complete compliance with all applicable laws, as evidenced by the 37 photographs submitted by the Complainants as part of their original complaint, which fairly and accurately represent the condition of the Property as of September 1, 2000. The deficiencies included, in addition to the unsanitary conditions, exposed electrical wiring, missing electrical switch plates and outlet covers, rotted wood, and a broken window. The Commission finds that these conditions constitute a health and safety hazard to the Complainants.

7. The Commission finds therefore, that the Property was not clean, safe or sanitary at the commencement of the Complainants' Lease term and occupancy, September 1, 2000, and these conditions constituted a violation of Section 29-26(n) of the County Code, and caused a defective tenancy.

8. Pursuant to their obligation as required by Paragraph 19 of the Lease, entitled, "Notice of Defects or Malfunction," the Complainants properly notified the Respondent of the deficiencies in the Property at the time they took possession, on or about September 1, 2000, and they requested that he make needed and necessary repairs to remedy those deficiencies.

9. The Respondent failed to undertake any efforts to remedy, repair or correct the unsanitary conditions or any of the other hazardous and unsafe conditions brought to his attention by the Complainants, and his failure to correct these conditions or make needed and necessary repairs to the Property in a timely manner after being put on notice by the Complainants, constitutes both a substantial breach of the Lease by the Respondent and a violation of Section 29-26(d) of the County Code.

10. The Commission further finds that the Property was not habitable at any time during the Complainants' occupancy of the Property, and therefore, the Respondent was not entitled to any rent from the Complainants for the month of September, 2000.

11. Based on the Respondent's failure to deliver the Property to the Complainants at the commencement of the Lease in a clean, safe and sanitary condition, and the Respondent's failure to make needed and necessary repairs to the Property in a timely manner after being put on notice by the

Complainants, the Complainants were within their right to prematurely terminate the Lease and vacate the Property.

12. On or about September 7, 2000, the Complainants verbally notified the Respondent of their intention to terminate the Lease by the end of September, 2000, and on September 20, 2000, the Complainants' attorney, Julian Tepper, issued written confirmation of the Complainants' oral notice to vacate to both the Respondent and his agent, Tammy Burns.

13. The Commission credits the testimony of the Complainants that sometime after September 1, 2000, Complainant Naomi Richman stopped payment of the two (2) checks, Nos. 1251 and 1252 totaling \$2,600.00, that she paid to Long & Foster Real Estate Inc. on August 24 and 25, 2000, and the two (2) checks, Nos. 1254 and 1255 totaling \$1,500.00, that she paid to the Respondent. The Commission finds therefore, that the Complainants did not pay rent to the Respondent or the Respondent's Agent for the month of September 2000.

14. The Complainants vacated the Property on or about October 2, 2000, and their tenancy terminated as of that date. The Complainants owe no rent to the Respondent for the period October 1-2, 2000.

15. The Complainants failed to provide sufficient probative evidence or testimony that they incurred any actual moving expenses at the time they vacated the Property. The only documentation provided by the Complainants was an invoice from David H. Johnson Contractors of Carthage, New York, in the amount of \$4,060.00, sent to Alan Richman, Complainant Naomi Richman's father. There is no evidence or testimony in the record of the hearing to indicate that the Complainants paid any portion of this bill, and therefore, this claim is disallowed.

16. The Respondent, without a reasonable basis, failed to refund any portion of the Complainants' \$2,600.00 security deposit or issue them an itemized list of deductions being made from the security deposit, within forty-five (45) days after the termination of their tenancy, which constitutes a violation of § 8-203(e)(1) of the State Code, and has caused a defective tenancy.

17. The Complainants did not damage the Property beyond normal wear and tear as a result of their tenancy, did not breach the Lease, and owed no rent to the Respondent at the time they vacated.

18. The Complainants failed to provide sufficient probative evidence or testimony to support any findings regarding the Respondent's occupancy of a basement apartment at the Property and whether or not such occupancy constituted a breach of their Lease. Furthermore, the Department's Inspector, Bernard Marra, testified at the hearing that he was unable to gain access to the basement of the Property to conduct an inspection, and therefore, he could not ascertain if the basement was a separate dwelling unit occupied by the Respondent. Based on the above, the Commission chooses to make no findings regarding the Complainants' allegation that the Respondent occupied the basement of the Property or that such occupancy constituted a breach of their Lease.

19. The Respondent's failure to handle and dispose of the Complainants' security deposit in accordance with the requirements of § 8-203, "Security Deposits," of the State Code, and Paragraph 3, "Security Deposit," of the Lease, has caused a defective tenancy.

### **CONCLUSIONS OF LAW**

Accordingly, based upon a fair consideration of the testimony and evidence contained in the record, the Commission of Landlord-Tenant Affairs concludes:

1. The Commission notes that Chapter 29, "Landlord-Tenant Relations," of the County Code has been amended, and that the amendments became effective as of April 1, 2001. However, the termination of the Complainants' tenancy and the Respondent's alleged violations of Chapter 29 of the County Code took place prior to April 1, 2001, and therefore, although the public hearing in this matter took place after April 1, 2001, with the exception of newly enacted Section 29-19(e), the Commission must apply Chapter 29 as it was prior to the newly enacted amendments.

2. The Respondent failed to properly license the Property as a Rental Facility at the time it was offered for rent to the Complainants, August 28, 2000, which constitutes a violation of Section 29-16 of the County Code, and has caused a defective tenancy.

3. The Respondent's Lease did not contain a provision obligating the Respondent to deliver the Property and all common areas to the Complainants at the commencement of their tenancy in a clean, safe and sanitary condition, free of rodents and vermin, and in complete compliance with all applicable laws, which constitutes a violation of Section 29-26(n) of the County Code, and has caused a defective tenancy.

4. The Respondent failed to deliver the Property to the Complainants at the commencement of their tenancy, in a clean, safe and sanitary condition, and in complete compliance with all applicable laws, which constituted a serious and substantial breach of the Lease and a violation of Section 29-26(n) of the County Code, and has caused a defective tenancy.

5. The Property was not in a clean, safe or habitable condition at any time during the Complainants' occupancy, and as a result, no rent is owed to the Respondent by the Complainants. Based on the fact that the Complainants cancelled payment of their rent check for the month of September 2000, no rent refund is due the Complainants.

6. The Respondent charged the Complainants a security deposit in the amount of \$2,600.00, which sum was the equivalent of two (2) months rent, and therefore, no violation of § 8-203(b)(1) of the State Code has occurred on the part of the Respondent regarding the amount of the security deposit he charged the Complainants.

7. The Respondent's failure to refund any portion of the Complainants' \$2,600.00 security deposit within forty-five (45) days after the termination of their tenancy, when no damage in excess of ordinary wear and tear had been caused by the Complainants and no rent was owed by the Complainants, constitutes a violation of § 8-203(e)(1) of the State Code, and has caused a defective tenancy. Furthermore, the Commission finds that the Respondent had no reasonable basis to withhold any portion of the Complainants' security deposit for unpaid rent or damage to the Property.

8. The Respondent's failure to attend the public hearing in this matter after being put on notice by the Department and after being properly summoned to appear by the Commission, constitutes a violation of Section 29-44 of the County Code.

9. During the public hearing, the Complainants' attorney, Julian Tepper, on behalf of the Complainants, requested that the Commission award, in addition to the relief sought by the Complainants, reasonable attorneys fees. In response to his request, the Commission determined to leave the record of these proceedings open until not later than June 29, 2001, to allow Mr. Tepper time to make such a submission to the Department. The Commission specifically requested a statement from Mr. Tepper regarding the amount of his fees, together with the signatures of the Complainants indicating their agreement with submission (See hearing transcript, page 58).

10. By correspondence dated and received on June 26, 2001 (See Commission's Exhibit No. 2), Mr. Tepper provided the Department with a document entitled, "Post-Hearing Submission On Behalf of Complainants," which states, in pertinent part regarding attorneys fees, "**Legal Fees Claimed:** Fees through hearing for services rendered: 12 hours \$ 3,300.00." However, contrary to the Commission's instructions, Mr. Tepper's statement does not contain the signatures of the Complainants, Dave Prakash, Naomi Richman and Pushpa Prakash, indicating their agreement with

the attorneys fees requested. Therefore, based on his failure to comply with the Commission's instructions, Mr. Tepper's request on behalf of the Complainants for an award of attorneys' fees is DENIED.

11. Pursuant to § 8-203(e)(4) of the State Code, "If the landlord, without a reasonable basis, fails to return any part of the security deposit, plus accrued interest, within 45 days after the termination of the tenancy, the tenant has an action of up to threefold of the withheld amount, plus reasonable attorney's fees." The Commission has concluded that the Respondent's withholding of the Complainants' \$2,600.00 security deposit was unreasonable. However, to award a penalty, as requested by the Complainants, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Respondent's conduct in wrongfully withholding the Complainants' deposit, whether or not the Respondent acted in bad faith, and any prior history by the Respondent of wrongful withholding of security deposits. Although the Respondent had no reasonable basis to withhold the Complainants' security deposit, the Commission finds that the Respondent has no known history of wrongful withholding of security deposits. Taking this factor into consideration, the Commission concludes that although the Respondent may have had no reasonable basis to withhold the Complainants' security deposit, his actions were not egregious or in bad faith, and therefore, the Complainants' request for a threefold penalty of the withheld amount is hereby DENIED.

#### **ORDER**

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby Orders as follows:

1. The Lease between the Complainants, the Respondent and the Respondent's Real Estate agent is declared NULL AND VOID;

2. The Complainants' request for reimbursement of moving expenses, for reasonable attorneys fees, and for a threefold penalty of the withheld amount of their security deposit, are all DENIED; and,

3. The Respondent must pay the Complainants **\$2,600.00**, which sum represents the entire amount of the Complainants' security deposit wrongfully withheld by the Respondent.

Commissioners Andrea Sonde-Hawthorne, Donna Henry Wright and Kevin Gannon, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this order, Respondent John Burkett, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th floor, Rockville, Maryland 20850, within thirty (30) calendar days of the date of this Decision and Order, a check made payable to Dave Prakash, Naomi Richman and Pushpa Prakash in the full amount of \$2,600.00.

The Respondent, John Burkett, is hereby notified that Section 29-48 of the County Code declares that failure to comply with this Decision and Order is punishable by a \$500.00 civil fine Class A violation as set forth in Section 1-19 of the County Code. This civil fine may, at the discretion of the Commission, be imposed on a daily basis until there is compliance with this Decision and Order.

In addition to the issuance of a \$500.00 civil fine Class A violation, should the Commission determine that the Respondent has not, within thirty (30) calendar days of the date of this Decision and Order, made a bona fide effort to comply with the terms of this Decision and Order, it may also refer the matter to the Office of the County Attorney for additional legal enforcement.

Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland within thirty (30) days from the date of this Decision and Order, pursuant to the Maryland Rules governing administrative appeals. Be advised that pursuant to Section 29-49 of the County Code, should the Respondent choose to appeal the Commission's Order, he must post a bond with the Circuit Court in the amount of the award (\$2,600.00) if he seeks a stay of enforcement of this Order.

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Kevin Gannon, Panel Chairperson  
Commission on Landlord-Tenant Affairs