

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

In the Matter of:

Nina R. Waters-Sherrod

Complainant

vs.

Vikram S. and Vijay Bala Kushawaha

Respondents

Case #: 11783

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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, 29-44 and 29-47 of the Montgomery County Code, 2001, as amended ("County Code"), and the Commission having considered the testimony and evidence of record, it is therefore, this 12th day of August, 2002, found, determined, and ordered, as follows:

BACKGROUND

On July 11, 2001, Nina R. Waters-Sherrod (the "Complainant"), former tenant at 4118

Havard Street, 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 she alleged that Vikram S. and Vijay Bala Kushawaha (the "Respondents"), owners of the Property: (1) proceeded to evict her from the Property on or about April 5, 2001, after accepting full payment of April 2001 rent, and failed to refund the balance of April 2001 rent; (2) failed to issue her an itemized list of damages being assessed against her \$1,300.00 security deposit plus \$52.00 accrued interest, together with a statement of costs actually incurred to repair that damage, within (45) forty-five days after the termination of her tenancy, in violation of § 8-203(g)(1) of the Real Property Article, Annotated Code of Maryland, 1999, as amended ("State Code"), and therefore, pursuant to § 8-203(g)(2) of the State Code, the Respondents have forfeited their right to withhold any portion of the security deposit for damages; (3) assessed unjust charges against her security deposit to repair damage that was not in excess of ordinary wear and tear, to repair damages that were existing at the commencement of her tenancy, and to repair damage that was not her responsibility, in violation of § 8-203(e)(4) and § 8-203(f)(1) of the State Code; and (4) without a reasonable basis, failed to refund any portion of her security deposit plus accrued interest within forty-five (45) days after the termination of her tenancy, in violation of § 8-203(e)(4) of the State Code, and therefore, the Respondents are liable to her for a penalty of up to threefold the withheld amount.

Specifically, the Complainant asserts that: (1) the Respondents failed to deliver the Property to her at the commencement of her tenancy in a clean, safe and sanitary condition; (2) the Respondents failed to make needed and necessary repairs to the Property during her tenancy, even after being put on notice by the Department to make such repairs; (3) at the time she vacated the Property, several items had been damaged in excess of ordinary wear and tear, however, the Respondents failed to issue her an itemized list of damages together with a statement of the actual cost incurred to repair that damage within forty-five (45) days after the termination of her tenancy, and, as a result, they have forfeited their right to withhold any portion of her security deposit plus accrued interest; (4) the Respondents, without a reasonable basis, failed to refund a substantial portion of her security deposit plus accrued interest, and (5) the Respondents are claiming costs to repair damages that were either not in excess of ordinary wear and tear, or repairs that are not the responsibility of the Complainant.

The Respondents contend that: (1) the Complainant damaged the Property in excess of ordinary wear and tear as a result of her tenancy; (2) the charges assessed against her security deposit were for actual costs incurred to repair that damage; (3) these charges exceeded the amount of her security deposit plus accrued interest; (4) they did send an itemized list of damages to the Complainant, at her last known address, within forty-five (45) days after the termination of her tenancy as required by the State Code; and (5) the Complainant failed to pay the final water bill and failed to vacate the Property by January 31, 2001, the expiration date of the lease, after being issued a proper written notice; therefore, in addition to the damages

caused to the Property, they are entitled to retain all of the Complainant's April 2001 rental payment because they were unable to re-rent the Property until May 1, 2001.

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 14, 2002, the Commission voted to hold a public hearing on July 15, 2002. The public hearing in the matter of Nina R. Waters-Sherrod v. Vikram S. and Vijay Bala Kushawaha, relative to Case No. 11783, commenced on July 15, 2002, and concluded on that date.

The record reflects that the Complainant and the Respondents were given proper notice of the hearing date and time. Present at the hearing and presenting testimony and evidence were the Complainant, Nina R. Waters-Sherrod, the Respondents, Vikram S. and Vijay Bala Kushawaha; and six (6) witnesses called by the Commission: the Department's Housing Code Enforcement Inspectors Christopher Dabrowski, and Alli Oseni; Housing Opportunities Commission ("HOC") Inspectors Larry Johnson and Chris Mosquera; and the current tenants in the Property, Michelle Hinton and William Sewell. The Respondents were represented at the hearing by attorney Mark Hessel.

Without objection from the Complainant or the Respondents, the Commission entered into the record of the hearing the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Commission also accepted into evidence at the hearing two exhibits offered by the Respondents: (1) a 77-page compilation of documents (inspection reports, violation notices, correspondence, paid invoices and receipts and cancelled checks), identified as Respondents' Exhibit No. 1; and, (2) a series of 18 photographs of the Property, identified as Respondents' Exhibit No. 2A to 2R.

The Complainant is seeking an Order from the Commission for the Respondents to: (1) refund her entire security deposit (\$1,300.00) plus accrued interest (\$52.00); (2) reimburse her for excessive water bills she paid based on the Respondents' failure to repair chronic water leaks in the Property, and (3) to refund to HOC twenty-five (25) days rent for the period April 6-30, 2001.

FINDINGS OF FACT

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

1. The Respondents, Vikram S. and Vijay Bala Kushawaha (husband and wife), are the owners of the Property.

2. Throughout her tenancy, the Complainant was a participant in the HOC Section 8 Rental Assistance Program.

3. On February 9, 2000, prior to the Complainant's tenancy, HOC staff conducted a "pre-occupancy" inspection of the Property to determine if it was in compliance with HOC's Housing Quality Standards ("HQS"), and the Property failed the inspection.

4. On February 11, 2000, HOC staff conducted a re-inspection of the Property and determined that it was in compliance with HQS, and therefore, in a rentable condition.

5. On February 11, 2000, the Complainant signed an 11 month and 18-day lease agreement with the Respondents (the "Lease") for the rental of the Property, which commenced on that date, and expired on January 31, 2001. The monthly rent for the Property was \$1,514.00.

6. During the month of April 2000, the Complainant paid the Respondents a security deposit in the amount of \$1,300.00, which is receipted in the Lease.

7. During the course of the Complainant's tenancy, the Respondents failed to make needed and necessary repairs to the Property after being repeatedly put on notice by the Complainant, HOC and the Department, in violation of the Lease and Chapter 26, Housing and Building Maintenance Standards, of the County Code, 1994, as amended ("Housing Code"). The Respondents' failure to make these repairs has caused a defective tenancy.

8. The Respondents issued proper written notice to the Complainant to vacate the Property at the expiration of the Lease term, January 31, 2001.

9. The Complainant failed to vacate the Property as of January 31, 2001, pursuant to the Respondents' notice, and therefore, the Respondents were within their right to file suit in the District Court of Maryland to seek repossession of the Property.

10. The Complainant was evicted from the Property by judicial process on April 6, 2001, and her tenancy and obligation to pay rent to the Respondents ceased on that date.

11. During the Complainant's hold-over in the Property, HOC continued to pay monthly rent to the Respondents, including February, March and April 2001.

12. Within forty-five (45) days after the termination of the Complainant's tenancy on May 5, 2001, the Respondents sent written notice, including an itemized list of damages, to the Complainant, at her last known address (the address of the Property), advising her that her entire \$1,300.00 security deposit plus \$60.70 accrued interest would not be refunded due to damage caused to the Property in excess of ordinary wear and tear (\$3,867.17), an unpaid water bill (\$278.00) and Court costs related to the eviction (\$80.00), for a total of \$4,225.17.
1[1]

13. The Respondents' May 5, 2001 notice also demanded payment from the Complainant of \$2,729.00 within 30 days. The notice also stated that if this amount was not paid, "a Court action will be filed to collect the listed damages" and in addition, "an interest charge at the rate of 10% plus attorney's fees and Court cost" would also be assessed.

14. The Complainant failed to pay the final water bill for the Property, in the amount of \$278.55. Payment of this amount was her responsibility pursuant to the terms and conditions of Paragraph 11, "Utilities," of the Lease, page 15 of Commission's Exhibit 1. Therefore, the Respondents were within their right to withhold this amount from the

Complainant's security deposit.

15. The Complainant damaged the Property in excess of ordinary wear and tear during her tenancy, and the Respondents incurred actual expense to repair that damage as evidenced by the paid bill and/or receipts entered into evidence at the hearing and were within their right to withhold the following amounts from the Complainant's security deposit:

a. broken glass mirrors	\$ 679.00
b. repair and paint bedroom walls	\$ 350.00
c. trash removal	<u>\$ 50.00</u>
Total Damages:	\$1,079.00

16. All of the additional charges assessed by the Respondents against the Complainant's security deposit were to repair damages that were either pre-existing, the result of the failure of the Respondents to properly maintain the Property, and/or the responsibility of the Respondents to repair, or other costs (Court costs) to which they are not entitled and, therefore, they are disallowed.

17. The correct amount of interest which had accrued on the Complainant's security deposit was \$52.00.

18. The Respondents re-rented the Property on May 1, 2001.

19. The Respondent's failure to handle and dispose of the Complainant's security deposit and accrued interest in accordance with the provisions of § 8-203 of the State Code, 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 on Landlord-Tenant Affairs concludes:

1. The Complainant damaged the Property in excess of ordinary wear and tear as a result of her tenancy in the amount of \$1,079.00, and failed to pay the final water bill for the Property, in the amount of \$278.55, which constitutes a breach of the Lease, for a total of \$1,357.55.

2. The Respondents presented to the Complainant a written list of damages claimed against her security deposit, together with a statement of the cost actually incurred to repair that damage, within 45 days after the termination of the Complainants' tenancy, in compliance with § 8-203(g)(1) of the State Code.

3. Pursuant to § 8-203 (e) (2) of the State Code, the correct amount of interest that accrued on the Complainant's security deposit was \$52.00 ($\$1,300.00 \text{ deposit} \times 4\% = \52.00) not the \$60.70 credited by the Respondents. Therefore, the total amount of the Complainant's security deposit plus accrued interest is \$1,352.00.

4. Based on the finding that HOC, not the Complainant, paid the monthly rent for the Property, including the month of April 2001, the Commission concludes that any claim for a refund of rent must be filed by HOC. In the absence of such a claim, the Complainant's request that the Respondents refund a pro rata portion of April 2001 rent to HOC is hereby DENIED.

5. Although the Respondents were awarded a judgment in a Tenant Holding Over suit filed against the Complainant in the District Court of Maryland, the Warrant of Restitution contained an inappropriate award of legal fees. At the time the Warrant of Restitution was issued, Chapter 29-26(o) of the County Code prohibited such an award. Specifically, Chapter 29-26(o) prior to April 1, 2001, expressly prohibited leases in Montgomery County from containing a provision that required Tenants to pay legal fees. Therefore, the \$80.00 charge for such legal fees assessed against the Tenant's security deposit is disallowed.

6. Paragraph 29 of the Respondents' lease, page 16 of Commission's Exhibit, reads as follows:

Pursuant to paragraph "default" Tenant agrees to pay as additional rent, an attorney's fees of \$900.00 for each and every suit filed by Landlord/Agent/Owner in the District Court of Maryland for a complaint in Summary Ejectment or for a Tenant holding over action. In all other actions or appeals filed by or defended by the Landlord/Agent/Owner in any Court, Tenant agrees to pay, additional rent a reasonable attorney's fees as provided in the paragraph "default".

This paragraph is in violation of Chapter 29-27(n). Chapter 29-27(n) reads as follows:

Contain no agreement by a Tenant to:

- (1) waive the right to a trial by jury;
- (2) pay Court costs that exceed actual costs awarded by a Court; or
- (3) pay legal costs or attorney fees other than those awarded by a Court after the Court finds that the fees and costs are reasonable.

In addition, any agreement obligating a Tenant to pay a Landlord's attorney's fees must:

- (4) provide that attorney's fees are not part of the Tenant's rent and need not to be the premises in a nonpayment action; and
- (5) obligate the Landlord to pay the Tenant's attorney's fees if the Tenant is the prevailing party in the legal action and fees are awarded by a Court.

The current language of Chapter 29-27(n) was enacted into law on April 1, 2001.

7. Paragraph 22 of the Respondents' lease, page 16 of Commission's Exhibit 1, reads as follows:

(a) Either Landlord/Agent or Tenant may terminate this Lease at the expiration of said Lease or any extension thereof by giving the other thirty (30) days written notice of termination prior to the Rent Due Date. If Tenant holds over after the expiration of the term of this Lease, he shall, with the Landlord/Agent's consent and in the absence of any written agreement to the contrary, become a Tenant from month to month at the monthly rate in effect during the last month of the expiring term. All other terms and provision of this Lease shall remain in full force and effect.

(b) If Tenant holds over (fails to vacate) the premises after proper notice, Landlord/Agent may hold the Tenant accountable for twice the monthly rent for the period of the holdover and for consequential damages due to an incoming Tenant's inability to enter the premises because of Tenant's holdover occupancy.

This paragraph is in violation of Chapter 29-54 Rent Adjustments; notice requirements.

8. Based on the finding that the Respondents did not unreasonably or wrongfully withhold any portion of the Complainant's security deposit plus accrued interest, the Complainant's request for a threefold penalty of the withheld amount is hereby DENIED.

9. Although the Commission has determined that the Complainant damaged the Property in excess of ordinary wear and tear in the amount of \$1,079.00, and breached the Lease by failing to pay the final water bill in the amount of \$278.55, which leaves a balance due the Respondents by the Complainant of \$5.55, in the absence of any counter-complaint filed by the Respondents in this matter, no such award can be made.

ORDER

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

1. The Complainant's claim for a refund of her \$1,300.00 security deposit plus \$52.00 in accrued interest is DENIED.

2. The Complainant's request that the Respondents refund a pro rata portion of April 2001 rent to HOC is hereby DENIED.

3. Any future claim by the Respondents against the Complainant arising from and out of her tenancy at the Property is limited to \$5.55, the total amount of damages that exceeded the amount of the Complainant's security deposit plus accrued interest.

4. The Respondents must immediately, and at all times hereafter, fully comply with any and all notices of violation issued by the Department or HOC, within the time-frames set by the Department and/or HOC, for repairs and maintenance to the Property and to all other rental facilities they own, operate or manage in Montgomery County, Maryland; failure to do so will constitute non-compliance with this Order and subject the Respondents to immediate revocation of the Rental Facility License for any such property and enforcement of this Order.

5. Due to the existence of paragraphs in the Respondent's lease that are in violation of applicable County law, for a period of two (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, Maryland. Failure to comply with this review and approval requirement constitutes non-compliance with the 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.

Commissioner Daryl Steinbraker, Commissioner Jeffrey Burritt, and Commissioner Donna Henry-Wright, Panel Chairperson, concurred in the foregoing decision unanimously.

The Respondents, Vikram S. and Vijay Bala Kushawaha, are 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 Class A civil citation and \$500.00 civil fine, should the Commission determine that the Respondents have failed 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.

Donna Henry-Wright, Panel Chairperson
Commission on Landlord-Tenant Affairs

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2[1] The Commission notes that the Respondents' notice incorrectly lists damages, water bill and Court cost at \$4,025.10.
