

Before the

Commission on Landlord-Tenant Affairs

for Montgomery County, Maryland

In the Matter of Elfrieda Allen Complainants	
v.	Case No. 24967
William Bibb and Charles Hayes, Hayes Real Estate, Inc. Rental Facility: 19018 Stedwick Drive, Montgomery Village, Maryland 20886 (License #11557) Respondent	

- [Decision and Order](#)
- [Background](#)
- [Procedural Issue](#)
- [Findings of Fact](#)
- [Conclusions of Law](#)
- [Order](#)

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 ("County Code"), and the Commission having considered the testimony and evidence of record, it is therefore, this 5th day of January, 2004, found, determined, and ordered, as follows:

BACKGROUND

On March 18, 2003, Elfrieda Allen (the "Complainant") former tenant at 19018 Stedwick Drive, Montgomery Village, Maryland 20886 (the "Property"), a licensed single-family rental facility in Montgomery County, Maryland, filed a formal complaint within the Office of Landlord-Tenant Affairs with the Department of Housing and Community Affairs (the "Department") in which she alleged William Bibb, owner of the Property, and Charles Hayes, Hayes Real Estate Inc., agent for the owner (collectively hereinafter referred to as the "Respondents"): (1) assessed unjust charges against her \$1,200.00 security deposit plus accrued interest after the termination of her tenancy, in violation of § 8-203(f)(1)(i) of Real Property Article, Annotated Code of Maryland, 1999, as amended ("State Code"); and (2) failed to reimburse her for improvements she made to the Property during her tenancy, in the amount of \$200.00.

By a letter dated April 16, 2003, the Complainant amended her original complaint to request that the Commission award her three times the amount withheld from her security deposit as a penalty for the Respondents' unreasonable withholding of that amount.

Specifically, the Complainant asserts that: (1) she did not damage the Property in excess of ordinary wear and tear as a result of her tenancy; (2) the Respondents charged her for damage that she did not cause or damages that were the Respondents' obligation to repair and maintain; (3) the Respondents failed to deliver the carpeting in the Property to her at the commencement of her tenancy in a clean and sanitary condition; and (4) the Respondents refused to reimburse her \$200.00 which was the actual cost she incurred to dry and clean the carpet.

The Respondents contend that: (1) the Complainant damaged the Property in excess of ordinary wear and tear; (2) they incurred actual cost to make those repairs; and (3) they did not agree to reimburse the Complainant for the cost she incurred to clean the carpet.

After determining that the complaint was not susceptible to conciliation, the Department duly referred this case to the Commission for its review, and on August 5, 2003, the Commission voted to conduct a public hearing. The public hearing in the matter Elfrieda Allen v. William Bibb and Charles Hayes, Hayes Real Estate, Inc. relative to Case No. 24967 commenced on September 17, 2003, and was continued until Wednesday, November 5, 2003, and concluded on that date.

The record reflects that the Complainant and the Respondents were given proper notice of the hearing and date and time. Present at the hearing and presenting testimony and evidence were the Complainant, Elfrieda Allen, and Respondent, Charles Hayes, on behalf of himself and the Property owner William Bibb. Also providing evidence and testimony was one witness called by the Complainant, Emma Sims, and one witness called by the Respondents, Irwin Duncan. Without objection, the Commission entered into the record of the hearing the case file compiled by the Department, identified as Commission's Exhibit No. 1. Also without objection, the Commission entered into the record of the hearing one (1) exhibit offered by the Respondents, a photocopy of a check register that included the notation that Check #1757, dated December 3, 2001, in the amount of \$106.81, payable to the Complainant for "balance of security deposit," identified as Respondents' Exhibit No. 1.

At the second night of the public hearing, November 5, 2003, Panel Chairperson, Lyana Palmer, was absent. However, the Complainant and the Respondents chose to proceed with the hearing with Panel Members, Tim Gillespie and Jay Krampf, with Jay Krampf acting as Panel Chairperson. The Commission determined to leave the record of these proceeding open for two weeks, until November 19, 2003, to allow the Respondents the opportunity to submit copies of cancelled checks, invoices and communications related to the deductions made from the Complainant's security deposit.

By facsimile transmission dated November 11, 2003, before the record of these proceedings closed, Respondent Hayes submitted to the Commission photocopies of the following four (4) cancelled checks and explanations, identified as Respondents' Exhibit Nos. 2 through 5:

Respondents' Exhibit No 2:

Check No. 9013, from Hayes Real Estate, Inc., dated November 9, 2001, in the amount of \$2,314.00, made payable to Irwin Duncan, with the following handwritten explanation from Respondent Hayes:

“This check represents payment to the contractor, Irwin Duncan, from the owner’s funds. (Invoices charged to other owners are included in this check). \$1650 was charged to Mr. Bibb. \$860 of this amount was charged to Ms. Allen and charged to her security deposit. \$860 was paid to Mr. Bibb from her security deposit.”

Respondents’ Exhibit No 3:

Check No. 9018, from Hayes Real Estate, Inc., dated November 12, 2001, in the amount of \$3,475.00, made payable to Irwin Duncan, with the following handwritten explanation from Respondent Hayes: “New Carpet.”

“This check represents payment to the contractor, Irwin Duncan, from the owner’s funds. (Invoices charged to other owners are included in this check). \$1650 was charged to Mr. Bibb. \$860 of this amount was charged to Ms. Allen and charged to her security deposit. \$860 was paid to Mr. Bibb from her security deposit.”

Respondents’ Exhibit No 4:

Check No. 1751, from Hayes Real Estate, Inc., dated November 16, 2001, in the amount of \$241.19, made payable to WSSC, with the following handwritten explanation from Respondent Hayes: “Paid to WSSC. Please note the date paid. This was all Ms. Allen’s water usage.”

Respondents’ Exhibit No 5:

Check No. 1758, from Hayes Real Estate, Inc., dated December 3, 2001, in the amount of \$860.00, made payable to Hayes Real Estate, Inc., with the following handwritten explanation from Respondent Hayes: “This check represents reimbursement from the security deposit account to Mr. Bibb.”

Based on the above, the record of these proceeding closed on November 11, 2003. Furthermore, by correspondence dated December 16, 2003, 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 the County Code.

PROCEDURAL ISSUE

On the second night of the hearing the Respondent, Mr. Hayes, asked the Commission to consider a claim against the Complainant in the amount of \$1,200.00, based on his assertion that the Complainant failed to provide a proper one-month notice of her intention to vacate the Property. Because the Respondents never filed a counterclaim against the Complainant in this case, the Commission is denying, without prejudice, the Respondents' request to consider this new claim in this case.

FINDINGS OF FACT

Based on the testimony and evidence received at the hearing, the Commission makes the following findings of fact:

1. On October 24, 2000, the Complainant signed a one year lease agreement (the "Lease") with Respondent, Charles Hayes, Charles Hayes Real Estate, Inc., for the rental of the Property, which commenced on November 1, 2000, and expired on October 31, 2001.

2. At the commencement of the Lease, the Complainant paid the Respondents a security deposit of \$1,200.00.

3. By a letter dated November 10, 2000, the Complainant notified Respondent Hayes that she was postponing her move-in date for the following reasons: (1) "The carpet which was cleaned on the night of November 9, 2000, is soaking wet;" and (2) "I have an asthmatic son, more over, no human being should have to move into this condition."

4. Based on a complaint filed by the Complainant, on November 14, 2000, the Department's Inspector, Travis Aldous conducted an inspection of the Property. As a result of his inspection, on November 18, 2000, Inspector Aldous issued a Notice of Violation to Respondent Charles Hayes (See pages 17 to 19 of Commission's Exhibit No. 1), citing 18

violations of Chapter 26, *Housing and Building Maintenance Standards*, of the Montgomery County Code (“Housing Code”), and requesting the repair of those violations by December 18, 2000, including instructions to “clean all carpet.” The Commission further finds that at no time after being instructed by Inspector Aldous to “clean all carpet” did the Respondents pay to have the carpet at the Property cleaned.

5. Based on the Respondents’ failure to clean the carpets in the Property, on November 17, 2000, the Complainant hired Gabriel Garcia to clean the carpeting in the Property (See Invoice at Page 15 of Commission’s Exhibit No. 1) at a cost of \$200.00. The Commission finds, based on the Complainant’s credible testimony and the Inspector’s Notice of Violation, that the Respondents failed to properly clean the carpeting in the Property prior to the commencement of the Complainant’s tenancy, and that the Complainant incurred costs in the amount of \$200.00 to clean the carpet.

6. By a letter dated October 24, 2001, the Complainant issued written notice to Respondent Hayes of her intention to quit and vacate the Property at the expiration of the term of the Lease, October 31, 2001. The Commission finds that the Complainant did vacate the Property as of October 31, 2001.

7. By a letter dated December 3, 2001, Respondent Hayes issued the Complainant a list of damages and charges being assessed against her security deposit, itemized as follows:

Security Deposit	\$1,200.00
Interest	<u>48.00</u>
Total Credits:	\$1,248.00

Charges to Security Deposit:

WSSC Water Bill:	\$ 281.19
One missing garage door opener	45.00
Excessive wear – walls repaint	300.00

Replace storm window glass garage	125.00
8 bulbs + install	30.00
Stair handrail pulled apart	45.00
Replace bent water line – garage	75.00
Torn screen – upper bedroom	50.00
Knife cuts – kitchen countertop	35.00
Trash removal – house and yard	75.00
Rake leaves	<u>80.00</u>
Total Charges:	\$1,141.19
Balance:	\$ 106.81

8. The Complainant did not pay the final water bill at the time she vacated the Property. The Washington Suburban Sanitary Commission (WSSC) water bill submitted by the Respondents (See page 26 of Commission’s Exhibit No. 1), which is for the billing period November 28, 2001 through December 10, 2001, is in the amount of \$274.48 and includes a previous unpaid balance of \$169.96 and current charges for the period November 28th through December 10th in the amount of \$104.52. The Commission finds that the Complainant is responsible for the previous unpaid balance of \$169.96, but not the amount of \$104.52 which was for a period of time she did not occupy the Property. Therefore, the Respondents were within their right to withhold the amount of \$169.96 from the Complainant’s security deposit for the unpaid water bill. However, the Respondents had no reasonable basis to withhold any additional amount from the Complainant’s security deposit for the water bill. The Commission notes that Respondent Hayes withheld \$281.19 from the Complainant’s security deposit while the WSSC total bill was for \$274.48. When questioned about why \$281.19 was withheld, Respondent Hayes did not have an explanation other than to suggest it was an error.

9. The Commission finds that the Complainant received only one garage door opener from the company that installed the garage door during her tenancy, and that she returned the opener to Respondents at the time she vacated the Property. This finding is based on the invoice that Respondent Hayes produced at the hearing indicating that only one garage door opener was provided to the Complainant. Therefore, the Commission finds that the

Respondents' claim for \$45.00 charged against the Complainant's security deposit for the replacement of a garage door opener is disallowed. The Commission notes that initially at the hearing Respondent Hayes argued adamantly that his withholding of \$45.00 from the Complainant's security deposit for replacement of a garage door opener was proper because the Complainant had been issued two garage door openers and had only returned one. It was only when the Commission insisted on proof that Respondent Hayes searched his records for the invoice and realized he was mistaken and that only one garage door opener had been issued to the Complainant. The Commission finds that this conduct by Respondent Hayes suggests a lack of regard for the accuracy of his withholdings from the Complainant's security deposit, and the Commission suggests that in future dealings with tenants, Respondent Hayes check his invoices prior to withholding money from a tenant's security deposit.

10. The Commission finds that there was excessive dirt, grease and pencil and ink marks on the stairway and other walls in the Property at the time the Complainant vacated, which constitutes damage in excess of ordinary wear and tear. Furthermore, the Commission finds that the Respondents incurred actual expense, in the amount of \$300.00 (See page 27 of Commission's Exhibit No. 1) to "double coat" paint those areas. Therefore, the Commission finds that the Respondents were within their right to assess the cost actually incurred to paint walls damaged by the Complainant, in the amount of \$300.00, against the Complainant's security deposit.

11. The Commission accepts the testimony of the Complainant at the hearing that she was responsible for the broken storm window glass in the garage at the Property, which constitutes damage in excess of ordinary wear and tear, and therefore, the Respondents were within their right to assess the cost actually incurred to replace the broken glass, \$125.00, against the Complainant's security deposit (See Invoice at page 27 of Commission's Exhibit No. 1).

12. The Commission finds that the Complainant failed to replace 8 burned-out light bulbs in the Property at the time she vacated, which was her obligation pursuant to Paragraph 9, "Maintenance," of the Lease, which required the "replacement of ... light bulbs." Therefore, the Respondents were within their right to assess the cost they actually incurred to replace the burned-out bulbs, in the amount was \$30.00, against the Complainant's security deposit (See Invoice at page 27 of Commission's Exhibit No. 1).

13. The Commission finds that the Complainant did not damage the handrail in the Property during her tenancy. This finding is based on the credible testimony of the Complainant and her witness, Ms. Sims, that the handrail was loose at the time she moved in, and that she complained to Respondent Hayes about it during her tenancy. The Commission also notes the

testimony of Mr. Duncan that the Complainant might have complained about the loose handrail during her tenancy, but that he could not recall whether or not he repaired it. Therefore, the Commission finds that the Respondents' claim for \$45.00 charged against the Complainant's security deposit for the repair of the handrail is disallowed.

14. The Commission finds that the water line in the garage was damaged during the Complainant's tenancy and that the damage was in excess of ordinary wear and tear. Therefore, the Commission finds that the Respondents were within their right to assess the cost actually incurred to repair the bent water line, in the amount of \$75.00, against the Complainant's security deposit.

15. The Commission finds that the screens in the second-floor bedroom of the Property were not damaged by the Complainant in excess of ordinary wear and tear during her tenancy. The Commission credits the testimony of the Complainant and her witness, Ms. Sims, that there were no screens on the second floor windows of the Property at the time the Complainant moved in, and that she complained about this condition to Respondent Hayes. The Commission also credits the testimony of Respondents' workman, Mr. Duncan, that he installed old, worn-out screens that he found in the garage or basement, and that the original screens that came with the house were at least 20 years old. (Transcript, Vol. 2, page 37). The Commission was not persuaded by Respondent Hayes that the Complainant damaged the screens in excess of ordinary wear and tear during her tenancy, rather, the Commission finds that the screens were old, worn out and damaged at the time they were installed. Therefore, the Commission finds that the Respondents' claim for \$50.00 charged against the Complainant's security deposit for the repair of the second-floor bedroom screen is disallowed.

16. The Commission finds based on the very credible testimony of the Complainant and her witness, Ms. Sims, that the Complainant did not damage the countertop in the kitchen during her tenancy and that the countertop was in such bad condition at the commencement of the Complainant's tenancy that she had to cover it with plastic before she would use it. The testimony of Respondent Hayes and his witness Mr. Duncan failed to persuade the Commission that damage to the counter top was not present at the commencement of the Complainant's tenancy. Therefore, the Commission finds that the Respondents' claim for \$35.00 charged against the Complainant's security deposit for repair of the countertop is unsubstantiated and disallowed.

17. The Commission finds, based on the Complainant's very credible testimony, that the Complainant left the Property clean and sanitary at the time she vacated, free of trash and debris. The testimony of Respondent Hayes and his witness Irwin Duncan failed to persuade the Commission that the Complainant left any trash and debris in the Property and failed to persuade

the Commission that the Respondents incurred any cost to have that debris hauled away, and therefore, the Respondents' claim for \$75.00 charged against the Complainant's security deposit to remove trash and debris from the Property is unsubstantiated and disallowed.

18. The Commission finds that the Complainant maintained the grounds in good condition and removed leaves and debris from the yard at the Property at the time she vacated, as required by Paragraph 9, "Maintenance," of the Lease. The testimony of Respondent Hayes and his witness Irwin Duncan failed to persuade the Commission that the Complainant failed to rake leaves from the yard prior to vacating. Furthermore, Respondent Hayes provided no evidence at all that he incurred any cost to have the leaves raked, and therefore, the Respondents' claim for \$80.00 to rake leaves from the yard is unsubstantiated and disallowed.

19. The Commission credits the testimony of the Complainant at the hearing that she never received the balance of her security deposit, which was determined by the Respondents to be \$106.81, after the termination of her tenancy. Furthermore, Respondent Hayes testified at the hearing that after reviewing old bank statements he discovered that the check he wrote to the Complainant, in the amount of \$106.81, had never been cashed (Transcript, Vol. 2, page 16). Therefore, the Commission finds that the Complainant never received a refund of the undisputed balance of her security deposit, in the amount of \$106.81, after the termination of her 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 Respondents failed to deliver the carpets in the Property to the Complainant at the commencement of her tenancy in a clean and sanitary condition, which constitutes a violation Section 29-27(m) of the County Code and a breach of Paragraph 5, "Acceptance of Property," of the Lease, and has caused a defective tenancy. Furthermore, even after being instructed by Inspector Travis Aldous to clean the carpets, the Respondents failed to do so. Based on the Respondents' failure to properly clean and deliver the carpeting in the Property to the Complainant at the commencement of her tenancy, the Complainant incurred actual costs, in the amount of \$200.00 to clean the carpet, which is the amount she was damaged by the

Respondents' breach of lease. Therefore, the Respondents are liable to the Complainant in the amount of \$200.00.

2. Pursuant to § 8-203(f)(1)(i) of the State Code, the Respondents were within their right to withhold from the Complainant's security deposit the cost actually incurred to pay the final WSSC bill (\$169.96), to repaint damaged or dirty walls (\$300.00), to replace a broken storm window in the garage (\$125.00); to replace 8 burned-out light bulbs (\$30.00); and to repair a bent water line in the garage (\$75.00), for a total of \$699.96.

3. The Respondents' assessment against the Complainant's security deposit for a portion of the WSSC bill that was not the Complainant's responsibility (\$111.23); for a missing garage door opener that was never given to the Complainant (\$45.00); and for damage that was not in excess of ordinary wear and tear and/or for which no cost was actually incurred — \$45.00 to repair handrail, \$50.00 to repair a torn screen, \$35.00 to repair the countertop, \$75.00 for trash removal, and \$80.00 for leaf raking — for a total of \$441.23, constitutes a violation of § 8-203(f)(1)(i), § 8-203(f)(2), and § 8-203 (g)(1) of the State Code, and has caused a defective tenancy.

4. The Respondent owes the Complainant the undisputed amount of the security deposit, in the amount of \$106.81.

5. The Respondents caused a defective tenancy by failing to properly handle and dispose of the Complainant's security deposit plus accrued interest in accordance with the requirements of § 8-203 of the State Code and Paragraph 3, "Security Deposit," of the Lease.

6. Although the Commission concluded that the Respondents wrongfully withheld \$441.23 from the Complainant's security deposit, to award a penalty, as requested by the Complainant, pursuant to Section 29-47(b)(7) of the County Code, the Commission must consider the egregiousness of the Respondents' conduct in wrongfully withholding money from the Complainant's security deposit, whether or not the Respondents acted in bad faith, and any prior history by the Respondents of wrongful withholding of security deposits. In this case the Commission has found that although the Respondents had no reasonable basis to make certain deductions from the Complainant's security deposit, Respondents' actions do not rise to the level of bad faith or egregiousness that would warrant the award of a penalty, and therefore, the Complainant's request for a penalty is hereby denied. However, the Commission cautions Respondent Hayes that it is concerned about his lack of attention to detail that is apparent from his withholdings for a garage door opener that was never issued to the Complainant and for a

greater amount than the total of the WSSC bill, and the Commission urges Respondent Hayes to modify his business practices because such behavior could in future cases lead to the imposition of a penalty.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders the Respondents to pay the Complainant **\$748.04**, which sum represents her security deposit (\$1,200.00) plus accrued interest (\$48.00), plus reimbursement of \$200.00 for carpet cleaning, less damages and costs properly withheld (\$699.96).

The foregoing Decision was concurred in unanimously by Commissioner Tim Gillespie and Commissioner Jay Krampf, Panel Chairperson. Commissioner Lyana Palmer did not participate in deliberations or vote on this case.

To comply with this Order, Respondents, Allen Bibb and Charles Hayes, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order, a check made payable to Complainant, Elfrieda Allen, in the full amount of \$748.04.

The Respondents, Allen Bibb and Charles Hayes, 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 \$500.00 civil fine Class A violation, should the Commission determine that the Respondents have 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 Respondents choose to appeal the Commission's Order, they must post a bond with the Circuit Court in the amount of the award (\$748.04) if they seek a stay of enforcement of this Order.

Jay Krampf, Panel Chairperson

Commission on Landlord-Tenant Affairs