

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

In the matter of:

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Haifeng (Sally) Shao and Marvin Ferger, Jr.

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Complainants

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V.

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Case No. 25651

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Renay Weissman

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Respondent

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Rental Facility: 7834 Muirfield Court, Potomac, Maryland (Rental Facility License No. 16238)

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 all of the evidence, it is therefore, this 12th day of April, 2005, found, determined, and ordered, as follows:

BACKGROUND

On May 27, 2004, Haifeng (Sally) Shao, one of two former tenants at 7834 Muirfield Court, Potomac, Maryland (the "Property"), filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs (the "Department"), in which she alleged that Renay Weissman (the "Respondent"), co-owner of the Property: (1) assessed unjust charges against her \$1,850.00 security deposit after the termination of her tenancy, in violation of § 8-203(f)(1) of the Real Property Article, Annotated Code of Maryland, 1999, as amended ("State Code"); (2) failed to issue her an itemized list of damages claimed against the security deposit, together with a statement of the cost actually incurred to repair that damage, within 45 days after the termination of her tenancy, in violation of § 8-203(g)(1) of the State Code, and therefore, pursuant to § 8-203(g)(2), the Respondent has forfeited her right to withhold any portion of the security deposit for damages; (3) failed to refund any portion of the security deposit within 45 days after the termination of her tenancy, in violation of § 8-203 (e)(4) of the State Code; and (4) failed to credit her security deposit with accrued interest, in violation of § 8-203(e)(1) and (2) of the State Code.

By a letter dated October 10, 2004, Marvin Ferger, Jr., former co-tenant at the Property and cosigner of the lease agreement with Ms. Shao, advised the Department of his intention to join Ms. Shao as a Complainant seeking a refund of the security deposit from the Respondent. Therefore, Haifeng (Sally) Shao and Marvin Ferger, Jr. are hereinafter referred to as the "Complainants."

Specifically, the Complainants allege in their complaint that: (1) they did not damage the Property in excess of ordinary wear and tear during their tenancy; (2) the Respondent assessed against their security deposit costs to repair damages that were not in excess of ordinary wear and tear, damages which were the Respondent's obligation to repair and maintain, and damages for which no cost was actually incurred; (3) the Respondent failed to issue them an itemized list of damages claimed against their security deposit, together with a statement of the costs actually incurred to repair that damage, within 45 days after the termination of their tenancy; and (4) the

Respondent failed to refund interest which had accrued on their security deposit within 45 days after the termination of their tenancy.

The Respondent contends that: (1) the Complainants damaged the Property in excess of ordinary wear and tear during their tenancy; and (2) the cost actually incurred to repair that damage far exceeded the amount of the Complainants' security deposit plus accrued interest, and therefore, the Complainants are not entitled to a refund of any portion of the security deposit.

After determining that the subject complaint was not susceptible to conciliation, the Department referred this case to the Commission, and on September 14, 2004, the Commission accepted jurisdiction of the complaint and subsequently scheduled a public hearing for January 18, 2005.

The public hearing in the matter of Haifeng (Sally) Shao and Marvin Ferger, Jr. v. Renay Weissman, relative to Case No. 25651, commenced on January 18, 2005, and concluded on that date. 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 Complainants Haifeng (Sally) Shao and Marvin Ferger, Jr., and one witness they called to testify, Xiaoran Zhang. The Respondent, Renay Weissman, did not appear, but was represented at the hearing by her husband, Alan Drew, an attorney and co-owner of the Property. Alan Drew was also sworn as a witness and testified. Although he is a co-owner of the Property, Alan Drew did not sign the Lease with the Complainants and therefore, is not, for purposes of this case, a Respondent. However, because he had first-hand knowledge of some of the events that took place relative to the Respondent's handling and disposition of the Complainants' security deposit, such as conducting the final walkthrough inspection, the Commission allowed his testimony. [\[1\]](#)

The Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1. Noting the objection by Complainant Ferger, the Commission excluded Page 73 of the case file from the record. Noting the objection of Complainant Shao to admission of the first photograph, the Commission accepted into evidence from the Respondent a series of 11 photographs of the Property, identified as Respondent's Exhibit Nos. 1 to 11.

FINDINGS OF FACT

Based on the evidence the Commission makes the following findings of fact:

1. The Respondent and her husband, Alan Drew, have been the owners of the Property since 1986.

2. On January 23, 2002, the Complainants and Respondent entered into a one-year lease agreement (the "Lease") for the rental of the Property which commenced on March 1, 2002, and expired on February 28, 2003.

3. At the commencement of the Lease, the Complainants paid the Respondent a security deposit in the amount of \$1,850.00, which was receipted in the Lease.

4. On March 8, 2002, Complainant Ferger conducted an initial walkthrough inspection of the Property and completed an Inventory and Condition Form (See page 67 of Commission's Exhibit No. 1) which listed, in addition to other items, the following deficiencies:

Kitchen: Range: Part of gasket off/right front burner not working well.

Full Bath #1: Tub/Recess: Very rough surface/porcelain

5. The trash compactor, later cited by the Respondent as having been broken by the Complainants during their tenancy, was not listed on the printed form, and therefore, there are no comments regarding its condition provided by Complainant Ferger.

6. After the initial Lease term expired, the Complainants remained as tenants in the Property on a month-to-month basis.

7. On or about January 24, 2004, Complainant Ferger vacated the Property.

8. On or about February 1, 2004, Complainant Shao issued notice to the Respondent of her intention to vacate the Property by February 29, 2004.

9. By a letter dated February 19, 2004, the Respondent acknowledged receipt of the Complainants' notice to vacate and advised them, in pertinent part, regarding the condition of the Property at the time they vacated as follows:

“At the time that you vacate the property in order to receive your entire security deposit returned you will have to leave the property in the same condition that it was when you took possession. We had a walk thru before you moved in as you remember and the only thing that was noted on your lease was an acknowledgement on both your parts of the kitchen counter top and that one area to the left of the sink.

You are expected to have the carpets clean of all spots, stains and debris. All appliances are to be in working order and clean. Stove, Oven top and bottom, Dishwasher, Refrigerator, all Sinks kitchen and bathrooms, Garbage Disposal, Washer and Dryer.

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The floors are to be swept and cleaned in areas of foyer, kitchen, bathrooms and basement. Bathrooms are to be cleaned including sinks, tubs and shower. All cabinets are to be cleaned and wiped out in bathroom and kitchen. No trash or debris is to be left either inside or outside in backyard.

All binds [sic] are to be in working condition in all rooms as you found them, no slats missing, no missing cords and clean.”

10. The Complainants vacated the Property on February 29, 2004, having paid rent in full to the Respondent through that date, and their tenancy terminated on that date.

11. By a letter dated March 3, 2004, the Respondent notified the Complainants that the Property had been inspected on March 1, 2004. The letter also contained a list of 33 deficiencies noted during the inspection, and stated that “House was left in an [sic] filthy condition with no regard to the property.” Respondent’s letter did not contain a statement of costs incurred to repair any of the damages noted during the inspection.

12. By a letter dated March 10, 2004, Complainant Shao responded to the Respondent’s March 3rd letter and disputed the damages claimed with the exception of Item #17 (bent vinyl slats on window in master bedroom) and Item #33 (missing hand-held fire extinguisher), and advised the Respondent that, “You may deduct replacement cost for items of same quality.”

13. By a letter dated April 18, 2004, forty-nine (49) days after the termination of the Complainants’ tenancy, the Respondent sent to the Complainant Shao at her new address in Clifton, Virginia, a revised list of 23 damages being claimed against the security deposit itemized as follows:

- “1. 26 filled green garbage bags filled with garbage that were left in the house as well as on the curb.
2. Filled green garbage bags left in storage shed, along with 4 car rims.
3. Handle broken off of storage shed door in backyard.
4. Wrought iron coffee table left in laundry room to discard by landlord
5. Large glass top presumed to fit the wrought iron base, left in laundry room to be discarded by landlord
6. 2 x 4’s (5) pieces of large lumber left in laundry room to be discarded by landlord

7. Trash left in kitchen cabinets, large Tofu containers, no cabinets wiped out.
8. In front of house on curb, 1 large CPU which can not be just dumped, Childs table, Broken Office Chair, clothing, old shoes, and other debris, that community trash removal does not take. Required other pick-up.
9. Burners on stove broken.

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10. Trash compactor broken.
11. Dishwasher broken.
12. Odor in refrigerator that smelled like dead fish, which required professional help in removing.
13. Bugs and bug traps all over house, kitchen, foyer, family room, in cabinets and on floor.
14. Burned holes in carpet in front of fire-place and large red stain in living room which carpet cleaners said was Kool-Aid.
15. Entire carpet in living room, dining room and upstairs had terrible order [sic] which required professional cleaning to remove.
16. Blinds and windows had not been cleaned in two years.
17. Large rug left in family room rolled up and filled with rice.
18. Glitter on walls in bedroom, which required professional painting.
19. All information concerning the Brinks Alarm System and the Refrigerator removed.
20. Washer and Dryer scratched beyond wear and tear, and lint filter had not been cleaned in two years. Which made it a fire hazard.
21. Bathtub scratched beyond repair, had to be restored. Looked like it had been cleaned with SOS and all the surface had been removed.
22. Walls and floors in kitchen, foyer, and powder room marred beyond wear and tear.
23. Trash left in backyard garbage, and debris.”

14. The same April 18, 2004 letter also advised the Complainant that, “Therefore, the cost of restoring the house to a livable condition far exceeded your security deposit, and no refund will be made.” The Respondent’s letter did not contain a statement of costs incurred to repair any of the damages claimed, and Alan Drew testified at the hearing that the itemized list of damages was not sent to the Complainants within 45 days after the termination of their tenancy.

15. Respondent’s April 18, 2004 letter of security deposit disposition failed to credit the Complainants’ security deposit with two years simple interest, at 4% per annum, which sum is \$148.00.

16. The Commission finds that the Complainants failed to remove trash and debris, including numerous trash bags and boxes, from the Property at the time they vacated. However, the Respondent failed to provide any evidence to demonstrate that she incurred any actual costs to remove any of the items left by the Complainants. Therefore, no costs for these items can be assessed against the Complainants’ security deposit.

17. The Commission finds that the Complainants failed to clean the stove, refrigerator, windows or window blinds at the time they vacated the Property. However, the Respondent failed to provide any evidence to demonstrate that she incurred any actual costs to clean these items. Therefore, no costs for these items can be assessed against the Complainants’ security deposit.

18. The Commission finds that the Complainants did not damage the trash compactor, stove, dishwasher, washer and dryer or bathtub in excess of ordinary wear and tear during their

tenancy. This finding is supported by the initial walkthrough inspection report dated March 8, 2002, and the failure by the Respondent to provide sufficient evidence to demonstrate that the condition of the appliances at the end of the Complainants' tenancy was due to abuse or neglect on the part of the Complainants. Therefore, no costs for the repair or replacement of these items can be assessed against the Complainants' security deposit.

19. The Commission finds that the Complainants did not damage the walls in the Property in excess of ordinary wear and tear during their tenancy. This finding is supported by the credible testimony of the Complainants and their witness at the hearing, and the failure by the Respondent to provide sufficient evidence to demonstrate that the painted walls were damaged in excess of ordinary wear and tear by the Complainants. Therefore, no costs for the repair or replacement of these items can be assessed against the Complainants' security deposit.

20. The Commission finds that the Complainants did not damage the carpets during their tenancy or leave them in an unclean condition at the time they vacated. This finding is supported by the credible testimony of the Complainants and their witness, and the failure by the Respondent to provide sufficient evidence or persuasive testimony to demonstrate that the carpets were damaged in excess of ordinary wear and tear by the Complainants. Furthermore, Mr. Drew testified that regardless of the condition of the carpet, after every tenancy the Respondent hires Stanley Steamer to clean the carpets in the Property. Therefore, the cost incurred by the Respondent to clean the carpets, \$355.00, is disallowed.

21. The Commission finds that the Respondent did not incur any actual expense to repair or replace the broken handle on the storage shed door or to replace damaged window blinds, and therefore, no costs for the repair or replacement can be assessed against the Complainants' security deposit.

CONCLUSIONS OF LAW

Accordingly, based upon a fair consideration of all the evidence the Commission on Landlord-Tenant Affairs concludes:

1. The Respondent withheld from the Complainants' security deposit: (A) the cost to replace appliances in the Property that, although unclean, were not damaged by abuse or in excess of ordinary wear and tear by the Complainants; (B) the cost to re-glaze a bathtub that was a pre-existing condition; (C) the cost to remove trash and debris and repair or replace items for which no cost was actually incurred; (D) the cost to repaint the interior walls and to clean the carpets, that were not damaged in excess of ordinary wear and tear by the Complainants, in violation of § 8-203(f)(1) and (4) of the State Code, and has caused a defective tenancy.

2. The Respondent failed to send to the Complainants an itemized list of damages, together with a statement of costs incurred to repair that damage, within 45 days after the termination of the Complainants' tenancy, in violation of § 8-203(g)(1) of the State Code, and therefore, pursuant to § 8-203(g)(2), the Respondent has forfeited her right to withhold any portion of the Complainants' security deposit for damages, and has caused a defective tenancy.

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3. The Respondent, without a reasonable basis, failed to refund any portion of the Complainants' \$1,850.00 security deposit after the termination of their tenancy, in violation of § 8-203(e)(4) of the State Code.

4. The Respondent failed to credit the Complainants' security deposit with two years simple interest at the rate of 4% per year, which sum is \$148.00 ($\$1,850.00 \text{ deposit} \times 4\% = \$74.00 \times 2 \text{ years} = \148.00), in violation of § 8-203(e) of the State Code, and has caused a defective tenancy.

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

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders the Respondent to pay the Complainants **\$1,998.00**, which sum represents the Complainants' security deposit (\$1,850.00) plus accrued interest (\$148.00).

Commissioner Andrea Mack, Commissioner Christopher Toven, and Commissioner Travis Nelson, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondent, Renay Weissman, 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 Haifeng (Sally) Shao and Marvin Ferger, Jr. in the full amount of \$1,998.00.

The Respondent, Renay Weissman, 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, she must post a bond with the Circuit Court in the amount of the award (\$1,998.00) if she seeks a stay of enforcement of this Order.

Travis Nelson, Panel Chairperson

Commission on Landlord-Tenant Affairs