

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

In the matter of:

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Randy and Sandra Payne

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Complainants

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v.

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Case No. 26025

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Denise A. Forbes

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Respondent

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Rental Facility: 3800 Bel Pre Road, #10 Silver Spring, Maryland (Rental License No. 4305)

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 4th day of January, 2006, found, determined, and ordered, as follows:

PRELIMINARY ISSUE – ALTERNATIVE SERVICE

On September 15, 2005, the Commission issued an Order (See page 99 of the record) that authorized the Department of Housing and Community Affairs (“Department”):

“...to obtain alternative service on Denise Forbes, by posting a copy of the Department’s Affidavit [of Attempted Service], this Order, the Summons, Statement of Charges and Notice of Hearing on or near the front door of the property located at 7335 Hidden Cove, Columbia, Maryland 21046 and by mailing a copy of those documents to the Defendant at her last known address, located at 7335 Hidden Cove, Columbia, Maryland 21046.”

The Department determined the address of the Respondent based on the following information:

1. When she applied for a Rental Facility License for the Property, the Respondent, Denise A. Forbes, advised the Department that her mailing address was P.O. Box 6547, Columbia, Maryland 21045. The U.S. Postal Service has notified the Department that P.O. Box 6547, Columbia, Maryland 21045 belongs to Denise Forbes, and her mailing address is 7335 Hidden Cove, Columbia, Maryland 21046 (See page 80 of the record);
2. On September 19, 2005, the U.S. Postal Service also notified the Department that mail is delivered to the Respondent, Denise A. Forbes, at 7335 Hidden Cove, Columbia, Maryland 21046 (See page 93 of the record);
3. Maryland State Department of Assessments and Taxation records indicate that 7335 Hidden Cove, Columbia, Maryland 21046 is owned by the Respondent, Denise A. Forbes, and further indicate that it is her Principal Residence (See page 90 of the hearing record); and,
4. Maryland State Motor Vehicle Administration records indicate that Denise A. Forbes was issued a drivers license on November 8, 2003, and that her mailing address is 7335 Hidden Cove, Columbia, Maryland 21046 (See page 86 of the hearing record).

The need to obtain alternative service on the Respondent, Denise A. Forbes, was based on the following:

1. Repeated attempts by staff from the Department's Office of Landlord-Tenant Affairs to serve the Respondent, Denise A. Forbes, with a Summons, Statement of Charges and Notice of Hearing by regular mail and certified mail, return receipt requested, were unsuccessful, as the Respondent repeatedly refused to sign for and accept delivery of the documents;
2. Repeated attempts by staff to personally serve the Respondent with a Summons, Statement of Charges and Notice of Hearing were unsuccessful (See pages 91-92 of the record);
3. Repeated attempts to personally serve the Respondent with a Summons and Statement of Charges and Notice of Hearing by private process server were unsuccessful (See pages 87-89 of the record); and,
4. The Commission determined that the Department had shown due diligence in attempting to affect personal service on the Respondent with a Summons, Statement of Charges and Notice of Hearing, and that the Respondent was properly served (See Transcript Page 3).

BACKGROUND

On January 5, 2005, Randy and Sandra Payne ("Complainants"), former tenants at 3800 Bel Pre Road, #10, Silver Spring, Maryland ("Condominium"), a licensed rental condominium unit in Montgomery County, Maryland, filed a complaint with the Department's Office of Landlord-Tenant Affairs, in which they alleged that their former landlord, Denise Forbes (the "Respondent"), owner of the Condominium, in violation of § 8-203(f)(1) and (2) of the Real Property Article, Annotated Code of Maryland, 1999, as amended ("State Code"), assessed unjust charges against their \$1,375.00 security deposit plus accrued interest, after the termination of their tenancy, to repair damage that was not in excess of ordinary wear and tear, and to repair damage that they did not cause.

A copy of the complaint was mailed to the Respondent at 7335 Hidden Cove, Columbia, Maryland, 21046 on February 1, 2005, seeking both a response to the allegations and documentation regarding the withholding of the Complainants' security deposit plus interest.

By a letter dated March 9, 2005, the Respondent advised the Department that the Complainants: (1) damaged the Condominium in excess of ordinary wear and tear during their tenancy (broken shower head, dishwasher and cupboard drawer); (2) left the Condominium in an unclean condition at the time they vacated; and (3) failed to pay the full amount of the rent due for November 2004. The Respondent further advised the Department that, "I hereby notify you that this case is closed and the Paynes forfeited their security deposit due to the extent of damage and repairs needed to bring my home back to a livable condition."

The Complainants are seeking an Order from the Commission that the Respondent refund their entire security deposit (\$1,375.00) plus accrued interest (\$82.50), less the amount previously refunded by the Respondent (\$20.40), for a total award of \$1,437.10.

After determining that Case No. 26025 was not susceptible to conciliation, the Department referred this case to the Commission for review, and on May 3, 2005, the Commission voted to conduct a public hearing, which was originally scheduled for July 13, 2005. However, due to the Respondent's failure to accept service of the notice of the hearing, sent to her by certified mail to 7335 Hidden Cove, Columbia, Maryland, 21046, the hearing was postponed several times and finally rescheduled for October 20, 2005.

The public hearing in the matter of Randy and Sandra Payne v. Denise A. Forbes, relative to Case No. 26025, commenced on October 20, 2005, and concluded on that date. Present at the hearing and presenting testimony and evidence were Complainants Randy and Sandra Payne. Respondent Denise Forbes failed to appear and she was not represented by an attorney at the hearing. The record reflects that the Complainants and the Respondent were given proper notice of the hearing date and time. The Respondent was served with a Summons, Statement of Charges and Notice of Hearing on September 16, 2005, by posting of those documents on the front door of the Respondent's residence at 7335 Hidden Cove, Columbia, Maryland, 21046, by the Department's Investigator, Denise Stilla. The Respondent did not file a response to the Summons, Statement of Charges and Notice of Hearing, nor did she request a continuance in writing as provided in the Summons, Statement of Charges and Notice of Hearing, and Section 2A-6(f), "Notice of Hearing," of the Administrative Procedures Act.

The Commission proceeded with the hearing in the absence of the Respondent. After the Complainants, Randy and Sandra Payne were sworn in, the Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Commission also accepted into evidence the following exhibits offered by the Complainants: (1) a copy of three receipts for November 2004 rent totaling \$908.00, identified as Complainants' Exhibit No. 1; and (2) ten color photographs, identified as Complainants' Exhibit Nos. 2A through 2J.

Furthermore, the Commission extended the time period within which it would decide this matter pursuant to Section 7.1 of Appendix L, "Regulations of Commission on Landlord-Tenant Affairs," of the County Code.

FINDINGS OF FACT

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

1. On May 31, 2003, the Complainants and Respondent entered into a one-year lease agreement for the rental of the Condominium (the "Lease"), which commenced on June 1, 2003, and expired on May 31, 2004, at a monthly rent of \$1,450.00. [\[1\]](#)

2. At the commencement of the Lease, the Complainants paid the Respondent a security deposit of \$1,375.00, which amount is receipted in the Lease.

3. During their entire tenancy, the Complainants were participants in the Housing Opportunities Commission (HOC), Section 8 Voucher Program, and HOC paid a portion of the monthly rent to the Respondent.

4. On June 6, 2003, Complainant Randy Payne and the Respondent conducted a joint move-in inspection of the Condominium which revealed that all items in the Condominium

were either in “good” or “fair” condition, except for the “wall” in “bathroom #1”. The inspection also determined that the dishwasher was “new.”

5. In approximately April, 2004, the Respondent renovated Bathroom #1 in the Condominium and installed, among other items, a new shower head.

6. After the expiration of the initial Lease term, May 31, 2004, the Complainants remained as tenants in the Condominium on a month-to-month basis, and the rent was increased from \$1,450.00 to \$1,550.00 per month.

7. By a letter dated August 23, 2004, the Respondent advised the Complainants that the new showerhead in Bathroom #1 was broken, and she requested that the Complainants repair it within two weeks.

8. By a letter dated August 24, 2004, the Respondent issued written notice to the Complainants terminating the Lease effective September 30, 2004. Although the one-month notice to vacate complied with the “Termination – Hold Over” provision of the Lease, it did not comply with of § 8-402(b)(3)(iii), "Holding Over," of the Real Property Article, Annotated Code of Maryland, 1999, as amended ("State Code"), which requires two-months notice to terminate the tenancy.

9. On September 1, 2004, HOC Housing Inspector Ginette Peralta issued a “Notice of Failed Inspection” to the Respondent, citing 2 violations of the Housing Quality Standards (HQS) — a broken showerhead pipe and baseboard completely off the wall. Inspector Peralta determined that the broken showerhead was not due to misuse by the Complainants, and she ordered the Respondent to abate the violations by September 7, 2004. The Respondent failed to provide any evidence to rebut this finding.

10. In response to Case No. 25797 and notification from the Department that the notice to vacate did not comply with § 8-402(b)(3)(iii) of the State Code, the Respondent issued the Complainants a new notice to vacate with a termination date of November 30, 2004.

11. On September 14, 2004, the Complainants filed a complaint against the Respondent with the Department, identified as Case No. 25797, requesting that the Respondent repair the showerhead pipe, a toilet, and the dishwasher.

12. By a letter dated September 16, 2004, the Respondent notified Inspector Peralta that she believed that the Complainants were responsible for the broken showerhead, and that she had issued them a notice to vacate the Condominium by November 30, 2004. In addition, the Respondent requested a “minimum of thirty (30) day extension to complete the repairs.”

13. By a letter dated October 4, 2004, Inspector Peralta notified the Complainants that the Respondent had been granted an extension, until October 13, 2004, to complete the repairs in the Condominium.

14. By a letter dated October 14, 2004, Inspector Peralta notified the Complainants that the Condominium had failed re-inspection on October 13, 2004, and advised them that “Rental Assistance payments to the landlord [Denise Forbes] will be abated.” The notice also advised the Complainants that, “If the repairs are not complete, the Housing Assistance Payments Contract and Lease will be terminated.”

15. In mid-October 2004, the Department’s Samson Awojoodu, Senior Planner, Rehab & Replacement Home Program, conducted an inspection of the showerhead pipe in the Condominium and reported the following:

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“I went to the apartment (3800 Bel Pre Road, #10, Silver Spring) and found a shower with no head. The showerhead and stem were on the vanity top. I took pictures of both. (See attached).

My conclusion was that the shower-head was screwed on without the necessary procedure that is, using plumber’s putty or tape around the stem before screwing the stem into the pipe. A proper procedure would have been to scrape off the excess, dried-up putty in the pipe, clean both the stem and the pipe thoroughly, apply new putty or tape to the stem, and then screw the stem into the pipe to maintain a watertight installation. A leak could occur if the stem does not fit tightly into the pipe and the presence of plier marks on the shower stem could point to excessive screwing to prevent a leak.”

16. On November 30, 2004, a joint move-out inspection of the Condominium was conducted with the Complainants, the Respondent's representative, Julio Rodriguez, and the Department's Investigator, Rosie McCray-Moody. Ms. Moody's written report indicates that she could not make a complete inspection because the Complainants were still in the process of vacating the Condominium. However, Ms. Moody noted the existence of the broken showerhead pipe, non-working dishwasher, missing molding in some places, some missing trim, and spots on the living room carpet.

17. The Complainants vacated the Condominium on November 30, 2004, having paid their portion of the monthly rent (\$908.00). The HOC did not pay its portion of the November 2004 rent (\$542.00) to the Respondent, based on the Respondent's failure to make needed and necessary repairs to the Condominium.

18. By a letter dated January 10, 2005, within 45 days after the termination of the Complainants' tenancy, the Respondent sent them a notice stating her intention to withhold all but \$20.40 from their security deposit for the following damages:

Replacement of a showerhead and repair wall	\$ 127.90
Replacement of the dishwasher	323.95
Repair a broken kitchen drawer	47.75
General cleaning	128.25
Carpet cleaning	268.00
Unpaid rent for November 2004	<u>542.00</u>
Total	\$1,437.85*

* Note: There is a discrepancy between the calculated amount of \$1,437.85 and the amount of \$1,437.60 which appears in Respondent's January 10, 2005 letter.

19. The Respondent's January 10th notification further advised the Complainants that their security deposit had been credited with 8% interest (\$108.00), and after subtracting the damages (\$1,437.60), refunded the balance of \$20.40 to the Complainants. Based on the duration of the Complainants' tenancy, 18 months, the correct amount of accrued interest is \$82.50 ($\$1,375.00 \text{ security deposit} \times .04\% = \$55.00 \times 1.5 \text{ years} = \82.50).

20. The Commission finds that at the time they vacated the Property, the Complainants had paid all rent due to the Respondent, including their portion of November 2004 rent, and as a result, they owed no additional rent to the Respondent. Therefore, the Respondent's withholding of \$542.00 from the Complainants' security deposit for unpaid rent is disallowed.

21. The Commission finds that the Complainants did not damage the dishwasher in excess of ordinary wear and tear during their tenancy. This finding is supported by the testimony of the Complainants.

22. The Commission finds that the Complainants did not damage the carpets in the Property in excess of ordinary wear and tear during their tenancy. This finding is supported by the testimony of the Complainants.

23. The Commission finds that the Complainants did not damage the Property in excess of ordinary wear and tear during their tenancy. This finding is supported by the credible testimony of the Complainants and the photographic evidence they introduced at the hearing.

Furthermore, the Respondent failed to provide any evidence to demonstrate either that the Complainants damaged the Property or that she incurred any actual expense to repair that damage. Therefore, the Respondent's withholding of \$895.85 from the Complainants' security deposit for repair of damages is disallowed.

CONCLUSIONS OF LAW

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

1. The Commission notes that the form Lease used by the Respondent was written for rental property in Washington, DC. The Complainants' receipt for their payment of the

security deposit to the Respondent, which is contained in the Lease, did not include all of the disclosures required by § 8-203.1(a), “Security deposit receipt,” of the State Code. Specifically, the receipt did not contain “A statement that failure of the landlord to comply with the security deposit law may result in the landlord being liable to the tenant for a penalty of up to 3 times the security deposit withheld, plus reasonable attorney’s fees,” required by § 8-203.1(a)(7).

2. The Respondent charged the Complainants for the repair of damages that were not the responsibility of the Complainants to repair, and/or damages that were not in excess of ordinary wear and tear, in violation of § 8-203 (f)(1)(i) of the State Code;

3. The Respondent assessed against the Complainants’ security deposit unpaid rent that was not the Complainants’ obligation to pay pursuant to the Housing Assistance Payments (HAP) contract between the Respondent and HOC, which constitutes a violation of § 8-203(f) (1)(i) of the State Code.

4. The Respondent’s failure to handle and dispose of the Complainants’ security deposit plus accrued interest in accordance with the applicable provisions of § 8-203, “Security Deposits” of the State Code caused a defective tenancy.

ORDER

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

1. Pay the Complainants **\$1,437.10**, which sum represents the amount of the Complainants’ security deposit (\$1,375.00) plus accrued interest (\$82.50), less \$20.40 previously refunded to the Complainants; and,

2. For any residential rental property the Respondent owns, operates or manages in Montgomery County, Maryland, offer all tenants a lease that fully complies with Chapter 29, *Landlord-Tenant Relations*, of the County Code, and Title 8, *Landlord and Tenant*, of the State Code.

Commissioner Andrea Mack, Commissioner Jeffrey Burritt, and Commissioner Matthew Moore, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondent Denise Forbes must forward to the Office of Landlord-Tenant Affairs, Attention: Michael T. Denney, Administrator, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order: (1) a check made payable to Randy and Sandra Payne for the amount of \$1,437.10; and (2) documentation that a lease agreement that fully complies with Chapter 29, *Landlord-Tenant Relations*, of the County Code, and Title 8, *Landlord and Tenant*, of the State Code has been offered to all tenants for any residential rental property the Respondent owns, operates or manages in Montgomery County, Maryland.

The Respondent, Denise Forbes, 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 (\$1,437.10) if she seeks a stay of enforcement of this Order.

Mathew M. Moore, Panel Chairperson

Commission on Landlord-Tenant Affairs

[1] The Commission notes that the Lease states that the monthly rent is “**Fourteen Fifty Dollars**” but then numerically states the rent as \$1,400. Based on the un-rebutted testimony of Complainant Sandra Payne (Transcript P.10), the Commission finds that the rent was \$1,450.00 per month.