

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

Sameer Akbar and Humera Ahmed	*	
	*	
Complainants	*	
	*	
V.	*	Case No. 32059
	*	Investigator: Maureen Harzinski
Maria Fe Bain and Paul Bain	*	
Respondents	*	

Rental Facility: 9211 Cedarcrest Drive, Bethesda, MD (Unlicensed)

DECISION AND ORDER

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland (“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 2nd day of June 2011, found, determined, and ordered, as follows:

BACKGROUND

On October 8, 2010, Sameer Akbar and Humera Ahmed (“Complainants”), former tenants at 9211 Cedarcrest Drive, Bethesda, MD (“Property”), an unlicensed rental property in Montgomery County, Maryland, filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs (“Department”), in which they allege that Maria Fe Bain [also known as Mary Fe Bain] and Paul Bain (“Respondents”), owners of the Property: (1) without a reasonable basis failed to refund any portion of their \$3,000.00 security deposit plus accrued interest after the termination of their tenancy, in violation of Section 8-203(e)(1) of the Real Property Article, Annotated Code of Maryland, as amended (“Real Property Article”); (2) failed to send them an itemized list of damages, together with a statement of the costs actually incurred to repair that damage, within the 45 days after the termination of their tenancy, in violation of Section 8-203 (g)(1) of the Real Property Article and therefore, pursuant to Section 8-203(g)(2), have forfeited their right to withhold any portion of the security deposit for damages.

The Respondents contend that: (1) they sent an itemized list of damages by email within 45 days after the termination of the tenancy; (2) the Complainants damaged the Property in excess of ordinary wear and tear during their tenancy; (3) the cost to repair the damages exceeded the amount of the Complainants’ security deposit plus accrued interest; and (4) the Complainants owed for unpaid utilities.

The Complainants are seeking the refund of their entire security deposit (\$3,000.00) plus interest (\$180.00).

After determining that Case No. 32059 was not susceptible to conciliation, the Department referred Case No. 32059 to the Commission for its review, and on December 7, 2010, the Commission voted to hold a public hearing on January 18, 2011. On or about December 30, 2010, Panel Chair Jan Patterson granted the Complainants' request for a continuance. The public hearing in the matter of Sameer Akbar and Humera Ahmed v. Maria Fe Bain and Paul, relative to Case No. 32059, commenced on May 10, 2011, and concluded on that date.

The record reflects that the Complainants and the Respondents were given proper notice of the hearing date and time. Present and sworn at the hearing and presenting evidence were Complainant Sameer Akbar, Respondent Maria Fe Bain, and Complainant's witness, Harris Salaad.

At the request of the Respondent who resides in Spain, and without objection by the Complainants, the Respondent participated in the hearing by video-conference, specifically Skype.

Without objection, the Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Commission also entered into evidence the following exhibits offered by the Complainants, consisting of 3 photos of the Property taken during the Complainants' tenancy, a computer printout of three computer screens which listed dates of pictures, and an email dated September 23, 2010, from the Respondent to the Complainants, collectively, identified as Complainants' Exhibit No. 1.

FINDINGS OF FACT

Based on the testimony and evidence of record, the Commission makes the following Findings of Fact:

1. On July 31, 2008, the Complainants and Respondents, through their agent, Alex Radice, Esq., signed a one year lease agreement ("Lease") for the rental of the Property, which commenced on August 1, 2008, and expired on July 31, 2009, for a monthly rent of \$3,000.00. On July 31, 2009, the Complainants and Respondents signed a one year renewal of the Lease which expired on July 31, 2010, at the same rent as the previous Lease.
2. On or about July 31, 2008, the Complainants paid the Respondents a security deposit in the amount of \$3,000.00, which amount is receipted in the Lease.
3. The Complainants vacated the Property on July 31, 2010, having paid rent in full through that date.

4. The Complainants' provided the Respondents with their forwarding address by email on August 23, 2011. Prior to that date, the Complainants' mailing address was the Property.

5. Sixty-seven days after the Complainants' termination of tenancy, the Respondent Maria Fe Bain mailed to the Complainants an itemized list of damages being claimed against the Complainants' security deposit together with a statement of the costs.

6. The Respondents submitted evidence of invoices from Pepco and Washington Gas, but failed to provide any evidence that they paid the bills.

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 send an itemized list to the Complainants within 45 days after the termination of their tenancy. Section 8-203(g)(1) and (2) of the Real Property Article states:

(1) If any portion of the security deposit is withheld, the landlord shall present by first- class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under subsection (f)(1) of this section together with a statement of the cost actually incurred; and, (2) If the landlord fails to comply with this requirement, the landlord forfeits the right to withhold any part of the security deposit for damages.

Therefore, pursuant to Sections 8-203(g)(1) and (2) of the Real Property Article, the Respondents have forfeited their right to withhold any portion of the Complainants' security deposit for damages.

2. The Respondents failed to substantiate that they incurred actual costs for the utilities which they assessed against Complainants' security deposit. Therefore, pursuant to Sections 8-203(g)(1) and (2) of the Real Property Article, the Respondents have forfeited their right to withhold any portion of the Complainants' security deposit for damages due to unpaid utilities.

3. The Respondents' failure to handle and dispose of the Complainants' \$3000.00 security deposit plus accrued interest in the amount of \$180.00 in accordance with the requirements of the applicable provisions of Section 8-203, "Security deposits," of the Real Property Article has caused a defective tenancy.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondent must pay the Complainants **\$3,180.00**, which sum represents the Complainants' security deposit (\$3,000.00) plus accrued interest (\$180.00).

Commissioner Tangela Bullock, Commissioner Kenneth Lemberg, and Commissioner Jan Patterson, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondent, Maria Fe Bain and Paul Bain, 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 Sameer Akbar and Humera Ahmed, in the amount of \$3,180.00.

The Respondents 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 Class A civil citations and civil fines of \$500.00 each, 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 (\$3,180.00) if a stay of enforcement of this Order is sought.

Jan Patterson, Panel Chairperson
Commission on Landlord-Tenant Affairs