

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

In the matter of:	*	
	*	
Jamal Stennett	*	
	*	
Complainant	*	
	*	
V.	*	Case No. 32298
	*	
Joy Brodie	*	
	*	
Respondent	*	
	*	

Rental Facility: 4452 Regalwood Terrace, Burtonsville, MD 20866 (License # 34909)

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 24th day of May, 2011, found, determined, and ordered, as follows:

BACKGROUND

On January 25, 2011, Jamal Stennett ("Complainant"), former tenant at 4452 Regalwood Terrace, Burtonsville, MD ("Property"), a licensed 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 she alleged that her former landlord, Joy Brodie, owner of the Property ("Respondent"): (1) failed to refund any portion of her \$1,595.00 security deposit plus accrued interest within 45 days after the termination of her tenancy, in violation of Maryland Code (1954, 2003 Repl. Vol., 2007 Suppl.), Real Property Article, Section 8-203(e)(1) (“Real Property Article”); and, (2) failed to send her an itemized list of damages, together with a statement of the costs actually incurred to repair those damages, within the 45 days after the termination of her tenancy, in violation of Section 8-203 (g)(1) of the Real Property Article, and therefore, pursuant to Section 8-203(g)(2), the Respondent has forfeited the right to withhold any portion of her security deposit plus accrued interest for damages.

The Complainant asserts that she did not damage the Property in excess of ordinary wear and tear during her tenancy, and therefore, the Respondent had no reasonable basis to withhold any portion of her security deposit plus accrued interest.

The Respondent contended that the Complainant damaged the Property in excess of ordinary wear and tear during her tenancy, and the costs she incurred to repair the damages took almost the entire amount of the security deposit the Complainant paid.

The Complainant is seeking an Order from the Commission for the Respondent to refund her entire \$1,595.00 security deposit plus interest, and a penalty of up to three times that amount based on the Respondent's unreasonable withholding of her entire security deposit plus interest.

After determining that the complaint was not susceptible to conciliation, the Department referred this case to the Commission for its review, and on April 5, 2011, the Commission voted to hold a public hearing on May 17, 2011. The public hearing in the matter of Jamal Stennett v. Joy Brodie, relative to Case No. 32298, was held on May 17, 2011.

The record reflects that the Complainant and the Respondent were given proper notice of the hearing date and time. Present and sworn at the hearing and presenting evidence were the Complainant, Jamal Stennett, the Respondent, Joy Brodie; and, Donald Brodie, Respondent's brother, witness for the Respondent.

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 Respondent: (1) copy of a letter dated February 13, 2009 sent to the Complainant with attachments (itemized list of damages dated March 25, 2009, invoice for carpet cleaning, receipt of payments and Check No. 1100 in the amount of \$363.60), identified as Respondent's Exhibit No.1; (2) a series of 33 pictures dated February 17, 2009, showing damages to the Property, identified as Respondent's Exhibit 2; (3) a series of 12 undated pictures showing the conditions of the Property before and after the Complainant vacated the Property, identified as Respondent's Exhibit 3; (4) Housing Opportunities Commission Inspection Report dated February 26, 2009, identified as Respondent's Exhibit No. 4; and, (5) copy of receipt No. 457002 showing payment of \$200.00 for trash removal, identified as Respondent's Exhibit 5.

FINDINGS OF FACT

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

1. On December 30, 2006, the Respondent and the Complainant signed a two year lease agreement ("Lease") for the rental of the Property, which commenced on January 6, 2007, and expired on January 31, 2009, for a monthly rent of \$1,600.00.
2. On January 1, 2007, the Complainant paid the Respondent a security deposit, in the amount of \$1,595.00; which amount is received in the Lease.
3. At the expiration of the lease term, the Complainant remained in the Property as tenant on a month to month basis until her vacate date.

4. The Complainant was a Housing Choice Voucher holder throughout her entire tenancy and the Housing Opportunities Commission (HOC) paid the Complainant's full amount of rent-\$1,600.00.

5. The Commission finds credible the Complainant's testimony that she vacated the Property on or about February 10, 2009, with HOC having paid rent in full through the month of February 2009.

6. The Commission finds that there was not a joint final walkthrough of the Property.

7. The Commission finds that the Complainant submitted a copy of a letter from her attorney, Sharina Stanton, dated March 6, 2009, advising the Respondent of the Complainant's forwarding address – ACP 07006 – P. O. Box 2995, Annapolis, MD 21404 (Commission's Exhibit No. 1-Page 72). Although the Respondent testified that she did not receive the letter, respondent did confirm that it was addressed correctly.

8. The Commission finds credible the Respondent's testimony that there was evidence of damage at the Property after the Complainant vacated. However, the Respondent did not provide sufficient evidence/documentation that those damages were in excess of ordinary wear and tear.

9. The Commission finds that the testimony of Donald Brodie, Respondent's brother did not provide any probative evidence in support of the Respondent's position that the Complainant damaged the Property in excess of ordinary wear and tear.

10. The Commission finds that the Respondent did not send to the Complainant, at her last known address, within 45 days after the termination of her tenancy, a list of damages being claimed against the Complainant's security deposit together with a statement of the cost actually incurred to repair that damage. Although the Respondent produced such a list at the hearing (Respondent's Exhibit No.1), and claimed that it, together with receipts for repairs, and a refund check in the amount of \$363.60, was mailed to the Complainant on March 25, 2009, to 4452 Regalwood Terrace, Burtonsville, MD 20866, the Commission does not find credible the Respondent's testimony regarding the authenticity of this document, when it was created, and when it was allegedly sent to the Complainant.

11. The Commission finds credible the Complainant's testimony that she never received the March 25, 2009, letter with the attachments, which included a refund check in the amount of \$363.60.

12. The Commission finds credible the Respondent's testimony that Check No. 1100 in the amount of \$363.60 never cleared her bank.

13. The Commission finds that the Respondent failed to credit the Complainant's security deposit with the correct amount of simple interest which had accrued on her \$1,595.00 security deposit from the commencement of her tenancy, January 1, 2007, until the termination of her tenancy, February 09, 2009.

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. Pursuant to Section 8-203(g)(1) and (2) of the Real Property Article, “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, “If the landlord fails to comply with this requirement, he forfeits the right to withhold any part of the security deposit for damages.” The Commission concludes that the Respondent failed to send the Complainant within 45 days after the termination of her tenancy, a list of damages claimed against her security deposit for actual cost incurred to repair those damages, which constitutes a violation of Section 8-203 (g) (1) of the Real Property Article, and therefore, pursuant to Section 8-203 (g) (2), the Respondent has forfeited her right to withhold any portion of the Complainant’s security deposit for damages.

2. The Commission concludes that the Respondent’s failure to pay the Complainant interest which had accrued on her security deposit constitutes a violation of Section 8-203 (e) (1) of the Real Property, and has created a defective tenancy.

3. Although the Commission concludes that the failure by the Respondent to refund any portion of the Complainant’s security deposit was unreasonable and constitutes a violation of Section 8-203 (e)(4) of the Real Property Article, to award a penalty, as requested by the Complainant, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Landlord’s conduct in wrongfully withholding all or part of the Complainant’s security deposit, whether the Landlord acted in good faith, and any prior history of wrongful withholding of a security deposit. Based on the evidence, the Commission concludes that the Respondent’s conduct did not rise to the level of bad faith or egregiousness necessary to award a penalty. Therefore, Complainant’s request for such an award is denied.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondent must pay the Complainant **\$1,690.70**, which sum represents the Complainant’s security deposit (\$1,595.00), plus accrued interest (\$95.70).

Commissioner David Greenstein, Commissioner Galia Steinbach, and Commissioner Deanna Stewart, Panel Chairperson, unanimously concurred in the foregoing decision.

To comply with this Order, Respondent, Joy Brodie, 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 Jamal Stennett, in the amount of \$1,690.70.

The Respondent, Joy Brodie, 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 Class A civil citation and \$500.00 civil fine, 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 (\$1,690.70) if a stay of enforcement of this Decision and Order is sought.

Deanna Stewart, Panel Chairperson
Commission on Landlord-Tenant Affairs