

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

In the matter of:

Tiffanie Bryant

Complainant

V.

Samuel N. Smith Living Trust
Samuel N. Smith, Trustee
Respondent

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Case No. 32682

Investigator: Maria Edison

Rental Facility: 11408 Cherry Hill Road #104, Beltsville, MD 20705 (License #20812)

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 3rd day of February, 2012, found, determined, and ordered as follows:

BACKGROUND

On July 29, 2011, Tiffanie Bryant ("Complainant"), former tenant at 11408 Cherry Hill Road, #104, Beltsville, MD ("Property"), a licensed multi-family 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 Samuel N. Smith, Jr., Trustee for Samuel N. Smith Living Trust, owner of the Property ("Respondent"): (1) failed to disclose her rights in writing when she paid her security deposit, in violation of Section 8-203(f)(1)(vi) of the Annotated Code of Maryland, Real Property Article, 1999, as amended ("Real Property Article"); (2) unreasonably withheld \$887.50 from her security deposit, plus accrued interest, in violation of Section 8-203 (e)(1) of the Real Property Article; and, (3) based on the unreasonable withholding, the Respondent may be liable for up to three times the withheld amount per Section 8-203(e)(4) of the Real Property Article.

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.

In response to the Complainant's allegations, the Respondent asserts that: (1) the Complainant damaged the Property in excess of ordinary wear and tear during her tenancy; (2) the repairs were completed and paid for within 45 days after the Complainant vacated the Property; and (3) the Complainant did not return the keys for three days and she was charged rent for those days.

The Complainant is seeking an Order from the Commission that the Respondent refund her entire security deposit plus accrued interest (\$887.50).

After determining that Case No. 32682 was not susceptible to conciliation, the Department referred this matter to the Commission for review, and on November 2, 2011, the Commission voted to conduct a public hearing on January 10, 2012.

The public hearing in the matter of Tiffanie Bryant v. Samuel N. Smith, Living Trust, Samuel N. Smith, Trustee, commenced on January 10, 2012, and concluded on that date. The record reflects that the Complainant and the Respondent were given proper notice of the hearing date and time. Present and offering evidence were the Respondent, Samuel N. Smith, Trustee, and the Complainant, Tiffanie Bryant.

Without objection, the Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1 and an Affidavit of Service for the Respondent, identified as Commission's Exhibit No. 2. Without objection, the Commission also entered into the record a series of photographs of the condition of the Property after the Complainant vacated, identified as Respondent's Exhibits 1 – 10.

FINDINGS OF FACT

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

1. On June 24, 2002, the Complainant signed a twelve-month lease agreement ("Lease") with the Respondent for the rental of the Property, which commenced on June 27, 2002, and expired on June 30, 2003, at a monthly rent of \$785.00.
2. On June 24, 2002, the Complainant paid the Respondent a security deposit in the amount of \$745.00, which amount is receipted in the Lease, however; the lease does not contain the disclosures required by Section 8-203(f)(1)(i-vii) of the Real Property Article;
3. The Commission finds that the Respondent failed to advise the Complainant of her rights in writing at the time the security deposit was paid in accordance with Section 8-203(f)(1)(vi) of the Real Property Article.
4. On July 1, 2003, the Complainant became a month-to-month tenant and remained in a month-to-month tenancy status until she vacated.
5. By correspondence dated April 26, 2011, the Complainant advised the Respondent of her intention to vacate the Property on May 31, 2011.

6. The Complainant vacated the Property on May 31, 2011, having paid rent in full through that date.

7. The Commission finds that on July 14, 2011, the Respondent mailed the Complainant an itemized list of damages claimed against her security deposit along with a refund check in the amount of \$43.68.

8. The Commission finds that the Complainant terminated the tenancy on May 31, 2011, and made a reasonable effort to return the keys to the Respondent after vacating the Property on May 31, 2011. Therefore, the Complainant does not owe the three (3) days of rent that was assessed against her security deposit after the termination of her tenancy.

9. The Commission finds credible the Respondent's testimony that the repairs cited on the itemized list sent to the Complainant have not been completed as yet due to some personal and financial issues.

10. The Commission finds that the Respondent failed to credit the Complainant's security deposit with the correct amount of simple interest accrued on her security deposit from the commencement of her tenancy (June 27, 2002) until the termination of her tenancy (May 31, 2011). In accordance with Section 8-203(e)(1) of the Real Property Article, the correct amount of accrued interest, based on the duration of the Complainants' tenancy, is the following:

June 27, 2002 – June 30, 2004 (4% x 2 years) =	59.60
July 1, 2004 – December 31, 2004 (2% for 6 months) ¹ =	14.90
January 1, 2005 – June 30, 2005 (1.5% for 6 months) =	11.18
July 1, 2005 – June 30, 2010 (3% x 5 years) =	111.75
July 1, 2010 – May 31, 2011 (1.5% every 6 months) =	<u>11.18</u>
TOTAL	208.61

CONCLUSIONS OF LAW

Accordingly, based upon a fair consideration of the testimony and evidence contained in the record, the Commission concludes:

1. Pursuant to Section 8-203(f)(1)(i-vi) of the Real Property Article, the Complainant was not advised of her rights in writing at the time the security deposit was paid and therefore, pursuant to Section 8-203(f)(vii) of the Real Property Article, the Respondent has forfeited his right to withhold any part of the security deposit for damages.

2. Pursuant to Section 8-203(g)(1) 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 (Emphasis added). The Respondent did not incur any of the costs to repair damage to the Property after the termination of the Complainant's tenancy. Therefore, pursuant

¹ The interest on security deposits changed from 4% to 3% effective October 1, 2004. Security deposits accrue interest in 6 month intervals and if the interval began at the higher rate, interest calculates at that rate for the 6 month period.

to Section 8-203(g)(2) of the Real Property Article, the Respondent has forfeited the right to withhold any part of the security deposit for damages.

3. The Respondent failed to properly credit the amount of interest which accrued on the Complainant's security deposit, which amount is \$208.61, in violation of Section 8-203 (e)(1) of the Real Property Article.

4. The Respondent's failure to handle and dispose of the Complainant's security deposit (\$745.00) plus accrued interest (\$208.61) in accordance with the requirements of the applicable provisions of Section 8-203, "Security deposits," of the Real Property Article, has created a defective tenancy.

ORDER

In view of the foregoing, the Commission hereby orders that the Respondent must pay the Complainant **\$909.93**, which amount is the Complainant's security deposit (\$745.00) plus accrued interest (\$208.61) less \$43.68 previously refunded.

Commissioners David Greenstein, Tangela Bullock, and Beverly Flanagan, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondent 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 Tiffanie Bryant, in the full amount of \$909.93.

The Respondent 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 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 enforcement action pursuant to Section 29-48(c) of the County Code.

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, a bond must be posted with the Circuit Court in the amount of the award (\$909.93) if a stay of enforcement of this Order is sought.

Beverly Flanagan, Panel Chair
Commission on Landlord-Tenant Affairs