

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

In the matter of:	*	
	*	
William Barry, Matthew Harmelin, Blair Coward and Kay Zaiser	*	
	*	
Complainants	*	
	*	
V.	*	Case No. 32722
	*	
Judith Koenick	*	
	*	
Respondent	*	
	*	

Rental Facility: 9108 Providence Avenue, Silver Spring, MD 20901 (License # 39870)

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 25th day of November, 2011, found, determined, and ordered, as follows:

BACKGROUND

On August 12, 2011, William Barry, Matthew Harmelin, Blair Coward and Kay Zaiser ("Complainants"), former tenants at 9108 Providence Avenue, Silver Spring, 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 they alleged that their former landlord, Judith Koenick, owner of the Property ("Respondent"): (1) failed to refund any portion of their \$2,800.00 security deposit plus accrued interest within 45 days after the termination of their 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 them 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 their 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 their security deposit plus accrued interest.

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

The Complainants are seeking an Order from the Commission for the Respondent to refund their entire \$2,800.00 security deposit plus interest, and a penalty of up to three times that amount based on the Respondent's unreasonable withholding of their entire security deposit plus interest.

After determining that the complaint was not susceptible to conciliation, the Department duly referred this case to the Commission for its review, and on October 4, 2011, the Commission voted to hold a public hearing on November 17, 2011. The public hearing in the matter of William Barry, Matthew Harmelin, Blair Coward, and, Kay Zaiser v. Judith Koenick relative to Case No. 32722 was held on November 17, 2011.

The record reflects that the Complainants and the Respondent were given proper notice of the hearing date and time. Present and sworn at the hearing and presenting evidence were the Complainants, William Barry, Matthew Harmelin, Blair Coward, and, Kay Zaiser; and, two witnesses called by the Complainants, Esabel Khoury and Vladimir Semendyai. The Respondent, Judith Koenick, failed to appear at the hearing.

The Commission notes that the Department sent notice of the November 17, 2011, hearing to the Respondent on October 5, 2011, by both regular and certified mail, return receipt requested (Page 67-Commission's Exhibit 1). The Commission further finds that neither the "Summons and Statement of Charges" sent by first class mail nor the one sent by certified mail were returned to the Department by the U.S. Postal Service. The Commission also notes that the Respondent's property was posted with the "Summons and Statement of Charges" on October 20, 2011 (Page 73-Commission's Exhibit 1).

The Respondent was notified on the Summons, Statement of Charges and Notice of Hearing that she may request for a continuance of the hearing by written request not less than 5 days prior to the date of the hearing. The Commission received an e-mail on November 16, 2011 (Page 79-80 Commission's Exhibit 1), two days before the hearing date, from the Respondent requesting the hearing be postponed due to car trouble. The Commission denied the Respondent's request for postponement.

The Commission finds therefore, that the Respondent, Judith Koenick, received proper notice of the hearing date and time.

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, without objection, into evidence the following exhibits offered by the Complainants: (1) a series of 22 photographs taken at the time they vacated, identified as Complainant's Exhibit No. 1; (2) another series of 24 photographs also taken at the time they vacated, identified as Complainant's Exhibit No. 2; and, (3) a WSSC bill for the period 1/6/10 through 3/26/10, identified as Complainant's Exhibit No. 3.

FINDINGS OF FACT

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

1. On May 9, 2010, the Respondent and the Complainants signed a one year lease agreement (“Lease”) for the rental of the Property, which commenced on May 14, 2010, and expired on May 13, 2011, for a monthly rent of \$2,800.00.
2. On May 9, 2010, the Complainants paid the Respondent a security deposit, in the amount of \$2,800.00, which amount is receipted in the Lease.
3. The Commission finds credible Complainant Blair Coward’s testimony that on or about May 1, 2011, the Respondent verbally advised them that they were expected to be out of the Property by the end of the Lease – May 13, 2011. At that time, the Complainants asked the Respondent if they could remain in the Property until June 15, 2011, since they had already paid rent through that date.
4. The Commission finds that the Complainants vacated the Property on June 18, 2011; having paid rent through June 15, 2011.
5. The Commission finds that the Complainants are liable to the Respondent for three days of rent for the period June 16, 2011, through June 18, 2011, in the amount of \$276.15.
6. The Commission finds credible Complainant Blair Coward’s testimony that a joint final walkthrough took place on June 18, 2011; at which time, no evidence of damages in excess of ordinary wear and tear were noted. There is a walkthrough inspection report on file (Pages 41 through 47 – Commission’s Exhibit 1).
7. The Commission finds credible the testimony of the two witnesses, presented by the Complainants: Esabel Khoury and Vladimir Semendyai, who testified that the Property was extremely clean at the time of the walkthrough inspection.
8. The Commission finds that on August 3, 2011, 46 days after the Complainants vacated the Property, the Respondent sent them a list of damages being claimed against their security deposit together with a statement of cost incurred to repair the damages.
9. The Commission finds that the Respondent sent the Complainants Official Check No. 210062975, dated August 3, 2011, in the amount of \$1,325.91, (Page 49-Commission’s Exhibit 1) as a refund of the remainder of their security deposit plus interest.
10. The Commission finds credible Complainant Blair Coward and Complainant William Barry’s testimony that they did not pay the final water bill for the Property in the amount of \$92.19.
11. The Commission finds that the Respondent credited the Complainants’ security deposit with the correct amount of simple interest.

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 Complainants within 45 days after the termination of their tenancy, a list of damages claimed against their security deposit. This failure 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 Complainants’ security deposit for damages.

2. The Commission concludes that based on the Respondent’s previous violation of §8-203, “Security Deposits,” of the Real Property Article, (*COLTA D & O – Case No. 9903-Darby v. Koenick*), her withholding of \$1,189.75 of the Complainants’ security deposit when no damages beyond normal wear and tear were caused to the Property by the Complainants, was willful, unreasonable and egregious and violated §8-203 (f) (4) of the Real Property Article, and 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 **\$2,379.50**, which sum represents the Complainants’ security deposit (\$2,800.00), plus accrued interest (\$84.00), less three days of unpaid rent (\$276.15), an unpaid WSSC bill (\$92.19), the refund already received by the Complainants (\$1,325.91); and, a one fold penalty of the amount unreasonably withheld (\$1,189.75) pursuant to §8-203 (f) (4) of the Real Property Article.

Commissioner Laura Murray, Commissioner Denise Hawkins, and Commissioner Beverly Flanagan, Panel Chairperson, unanimously concurred in the foregoing decision.

To comply with this Order, Respondent, Judith Koenick, 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 William Barry, Matthew Harmelin, Blair Coward, and Kay Zaiser, in the amount of \$2,379.50.

The Respondent, Judith Koenick, 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. 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 (\$2,379.50) if a stay of enforcement of this Decision and Order is sought.

Beverly Flanagan, Panel Chairperson
Commission on Landlord-Tenant Affairs