

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

In the matter of:	*	
	*	
Stephanie and David Morrow	*	
	*	
Complainants	*	
	*	
V.	*	Case No. 32736
	*	
Gayle Carey	*	
	*	
Respondent	*	
	*	

Rental Facility: 12502 Livingston Street, Silver Spring, MD 20906 (License # 61913)

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 22nd day of December, 2011, found, determined, and ordered, as follows:

BACKGROUND

On August 23, 2011, Stephanie and David Morrow ("Complainants"), former tenants at 12502 Livingston Street, 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, Gayle Carey, owner of the Property ("Respondent") assessed unjust charges against their security deposit after the termination of their tenancy in violation of Maryland Code (1954, 2003 Repl. Vol., 2007 Suppl.), Real Property Article, Section 8-203(f)(1) (“Real Property Article”).

The Complainants assert 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 Respondent contends that the Complainants damaged the Property in excess of ordinary wear and tear during their tenancy, and that the amount withheld from the security deposit was for actual cost incurred to repair those damages.

The Complainants are seeking an Order from the Commission for the Respondent to refund the balance of their security deposit plus accrued interest, in the amount of \$478.80, and a penalty of up to three times that amount based on the Respondent's unreasonable withholding from their 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 November 1, 2011, the Commission voted to hold a public hearing on December 13, 2011. The public hearing in the matter of Stephanie and David Morrow v. Gayle Carey relative to Case No. 32736 was held on December 13, 2011.

The record reflects that the Complainants and the Respondent were given proper notice of the hearing date and time. On November 4, 2011, the Respondent requested special consideration to attend the public hearing via conference call; request that was granted by the Commission. Present and sworn at the hearing and presenting evidence were the Complainants, Stephanie and David Morrow, the Respondent, Gayle Carey (via phone); and two Commission witnesses: Abdulkhaliq Sindi, Contractor; and, Rosie McCray-Moody, Manager, Office of Landlord-Tenant Affairs.

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) move-in inspection of the Property dated July 1, 2010, identified as Complainants' Exhibit No.1; (2) e-mail to the Complainants from the Respondent's Real Estate Agent-John Taylor, dated July 3, 2010, identified as Complainants' Exhibit No.2; and, (3) three photographs of the Property taken during the tenancy, identified as Complainants' Exhibit No. 3.

The Commission decided to keep the record open for seven calendar days, until December 20, 2011, so the Respondent could submit invoices for repairs performed at the Property by one of the Contractors (Sindi), as well as proof of payment for the work performed. On December 19, 2011, the Department received, via fax, a letter with attachments from the Respondent regarding allegations raised in the case, which was marked as Respondent's Exhibit No.1, and forwarded to all the parties. However, the documentation requested by the Commission was not submitted. The record was closed on December 20, 2011.

FINDINGS OF FACT

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

1. On May 24, 2010, the Complainants and the Respondent's Agent, John Taylor, Remax Premiere Selections, signed a one year lease agreement ("Lease") for the rental of the Property, which commenced on July 1, 2010, and expired on June 30, 2011, for a monthly rent of \$1,595.00 (Commission Exhibit No. 1 – Pages 8 through 23).

2. On or about May 24, 2010, the Complainants paid the Respondent a security deposit, in the amount of \$3,190.00, which amount is received in the Lease.

3. The Commission finds credible the Complainants testimony that on June 14, 2011, they mailed a letter via certified mail requesting the Respondent be present at a move-out inspection; and that the letter included their new forwarding address.

4. The Commission finds that on June 30, 2011, at the end of the lease term, the Complainants vacated the Property, having paid rent in full through that date.

5. The Commission finds credible the Complainants testimony that the Respondent never notified them via certified mail of a date and time of the move-out inspection, as required by the Lease.

6. The Commission finds credible the Complainants testimony that on July 2, 2011, a joint final walkthrough inspection of the Property took place, with the Complainants and the Respondent's contractor (Abdulakhaliq Sindi) at which time no damages in excess of normal wear and tear were noted. There is no walkthrough report on file.

7. The Commission finds that the testimony of Abdulakhaliq Sindi, Contractor, did not provide any probative evidence in support of the Respondent's position that the Complainants damaged the Property in excess of ordinary wear and tear.

8. The Commission finds that on July 29, 2011, the Respondent sent an e-mail to the Complainants describing the damages assessed against their security deposit (Commission Exhibit No. 1- Page 6).

9. The Commission finds credible the Respondent's testimony that she did not send to the Complainants, at their last known address, via regular mail, within 45 days after the termination of their tenancy, a list of damages being claimed against the Complainants' security deposit together with a statement of the cost actually incurred to repair that damage.

10. The Commission finds that the Complainants received from the Respondent a refund check in the amount of \$2,806.90 (Commission Exhibit No. 1 – Page 2).

11. The Commission finds that the Respondent failed to credit the Complainants' security deposit with the correct amount of simple interest which had accrued on their \$3,190.00 security deposit from the commencement of their tenancy, July 1, 2010, until the termination of their tenancy, June 30, 2011, in the amount of \$95.70.

12. The Commission finds credible Rosie McCray-Moody, Manager, Office of Landlord-Tenant Affairs, testimony that the case was referred for hearing based on the Respondent's dispute as to the interpretation of the law regarding normal wear and tear.

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 e-mail sent to the Complainants by the Respondent, which did not include any statement of the cost actually incurred, is not in compliance with the law and 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 the Respondent's failure to pay the Complainants the right amount of interest which had accrued on their 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 \$478.80 of the Complainant's security deposit plus accrued interest (\$383.10 plus \$95.70) 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 Complainants, 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 does not rise to the level of bad faith or egregiousness necessary to award a penalty. Therefore, Complainants' 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 Complainants **\$478.80**, which sum represents the Complainants' security deposit (\$3,190.00), plus accrued interest (\$95.70), less the amount previously refunded to the Complainants (\$2,806.90).

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

To comply with this Order, Respondent, Gayle Carey, 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 Stephanie and David Morrow, in the amount of \$478.80.

The Respondent, Gayle Carey, 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 (\$478.80) if a stay of enforcement of this Decision and Order is sought.

David Greenstein, Panel Chairperson
Commission on Landlord-Tenant Affairs