

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

In the matter of:	*	
	*	
Christopher and Elizabeth Haine	*	
	*	
Complainants	*	
	*	
V.	*	Case No. 33385
	*	
Anna Gatling	*	
	*	
Respondent	*	
	*	

Rental Facility: 2504 Spencer Road, Silver Spring, MD 20910 (License # 48595)

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 21st day of November, 2012, found, determined, and ordered, as follows:

BACKGROUND

On August 14, 2012, Christopher and Elizabeth Haine ("Complainants"), former tenants at 2504 Spencer Road, 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, Anna Gatling, owner of the Property ("Respondent"): (1) failed to refund any portion of their \$2,500.00 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 for damages.

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

The Complainants are seeking an Order from the Commission for the Respondent to refund their entire \$2,500.00 security deposit plus interest (\$112.50), 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 referred this case to the Commission for its review, and on October 2, 2012, the Commission voted to hold a public hearing on November 15, 2012. The public hearing in the matter of Christopher and Elizabeth Haine v. Anna Gatling, relative to Case No. 33385, was held on November 15, 2012.

The record reflects that the Complainants and the Respondent were given proper notice of the hearing date and time. The Commission found that on October 26, 2012, the Respondent Anna Gatling passed away. Present and sworn at the hearing and presenting evidence were Complainant Christopher Haine, Assen Assenov and Brian Talty, witnesses for the Complainant; and, the Respondent's son and Estate Representative, Roderick Slyke.

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 Anna Gatling's Certificate of Death, issued by the District of Columbia, identified as Respondent's Exhibit No.1; and, (2) Petition for Probate, filed in the Superior Court of the District of Columbia by Roderick Slyke requesting to be appointed as the Personal Representative of the Estate of Anna Gatling, identified as Respondent's Exhibit 2. The Commission also entered into evidence the following exhibits offered by the Complainants: (1) Copy of Judgment of District Court Case No. 26223, vacated by the District Court on September 21, 2012, by Judge Everngam, identified as Complainant's Exhibit No. 1; and, (2) Copy of a complaint filed in District Court against the Respondent in 2005 by a former tenant, identified as Complainant's Exhibit No. 2.

FINDINGS OF FACT

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

1. On June 8, 2010, the Complainants and the Respondent 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 \$2,200.00.
2. On or about June 8, 2010, the Complainants paid the Respondent a security deposit, in the amount of \$2,500.00; which amount is receipted in the Lease. This amount included a \$300.00 pet deposit.

3. On June 7, 2011, a one year lease extension was signed by the parties, for the period June 9, 2011 through June 9, 2012.

4. The Commission finds that the Complainants advised the Respondent of their intentions to move-out of the Property by June 14, 2012. By an e-mail dated June 4, 2012, the Respondent acknowledged that the Complainants' plans were to move-out on June 14, 2012 (Commission Exhibit No. 1 – Page 185)

5. The Commission finds credible Complainant Christopher Haine's testimony that he and his family vacated the Property on June 5, 2012.

6. The Commission finds that on June 7, 2012, a walkthrough inspection took place with Complainant Christopher Haine, Respondent Anna Gatling and Realtor Christine Williams. There is an inspection report on file signed only by the Respondent. (Commission Exhibit No. 1 – Page 73 through 77).

7. The Commission finds that on June 11, 2012, the Complainants made an automatic payment in the amount of \$1,026.67 to the Respondent's account, which amount represented rent for the period June 1 through June 14, 2012 (Commission Exhibit No. 1 – Page 21).

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

9. The Commission finds credible the testimony of the Complainant's witnesses, Assen Assenov and, Brian Talty that the Property was kept in good and functional condition during the Complainants' tenancy.

10. The Commission finds that the Respondent provided the Department with an undated itemized list of damages containing a description of estimates for repairs that never took place; and cost incurred to repair damages to the Property that were not in excess or ordinary wear and tear (Commission Exhibit No. 1 – Page 58 through 59).

11. The Commission finds that on July 12, 2012, the Respondent filed a lawsuit in the Small Claims Office of the District Court relative to property damages in the amount of \$5,000.00, Court Case No. 060200117432012 (Commission Exhibit No. 1 – Page 40 through 42).

12. The Commission finds that on August 21, 2012, Complainant Christopher Haine, filed a Motion for continuance of District Court Case No. 060200117432012 (Commission Exhibit No. 1 – Page 43).

13. The Commission finds that on July 25 2012, the Respondent filed an action for Failure to Pay Rent and Repossession of the Property against the Complainants in District Court, Court Case No. 26223; and that on August 15, 2012, a judgment in the amount of \$3,374.00 was entered against the Complainants (Commission Exhibit No. 1 – Page 45).

14. The Commission finds that on September 20, 2012, Complainant Christopher Haine, filed a Motion to Vacate the Judgment entered on Case No. 26223; this motion was granted by the Court (Complainant's Exhibit No. 1)

15. The Commission finds credible Complainant Christopher Haine's testimony that he never received a security deposit disposition letter or an itemized list of damages claimed against the security deposit; and, that he provided the Respondent, on several occasions, with his forwarding mailing address (Commission Exhibit No. 1 – Pages 187-190).

16. The Commission finds credible the Respondent's Representative's testimony, that the Respondent did not send to the Complainants, at their last known address, 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.

17. 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 \$2,500.00 security deposit from the commencement of their tenancy, June 8, 2010, until the termination of their tenancy, June 14, 2012.

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 their tenancy, a list of damages claimed against their 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 Complainants' security deposit for damages.

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

3. Although the Commission concludes that the failure by the Respondent to refund any portion of the Complainants' 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 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 did 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 **\$2,612.50**, which sum represents the Complainants' security deposit (\$2,500.00), plus accrued interest (\$112.50).

Commissioner Jay Hutchins, Commissioner David Goldberg, and Commissioner Beverly Flanagan, Panel Chairperson, unanimously concurred in the foregoing decision.

To comply with this Order, Respondent's Estate Representative, Roderick Slyke, 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 Christopher and Elizabeth Haine, in the amount of \$2,612.50.

The Respondent's Estate Representative, Roderick Slyke, 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's Estate Representative 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 (\$2,612.50) if a stay of enforcement of this Decision and Order is sought.

Beverly Flanagan, Panel Chairperson
Commission on Landlord-Tenant Affairs