

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

In the matter of:	*	
	*	
Tauna Stinson	*	
	*	
Complainant	*	
	*	
V.	*	Case No. 33420
	*	
Douglas Avison	*	
	*	
Respondent	*	
	*	

Rental Facility: 3309 Niles Street, Silver Spring, Maryland (License # 60468)

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 6th day of February, 2013, found, determined, and ordered, as follows:

BACKGROUND

On August 31, 2012, Tauna Stinson ("Complainant"), former tenant at 3309 Niles 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 she alleged that her former landlord, Douglas Avison, owner of the Property ("Respondent"), assessed unjust charges against her security deposit (\$1,800.00) plus accrued interest (\$216.00), in the amount of \$2,100.00, after the termination of her tenancy, in violation of Section 8-203 (f) (1) of the Real Property Article, Annotated Code of Maryland (1954, 2003 Repl. Vol., 2007 Suppl.), (“Real Property Article”).

The Complainant asserts that: (1) she did not damage the Property in excess of ordinary wear and tear during her tenancy; (2) the Respondent is charging her for rent that she does not owe; and, (3) the Respondent had no reasonable basis to withhold any portion of her security deposit plus accrued interest.

The Respondent contends that the Complainant breached the Lease by not allowing him to show the Property to potential tenants until she vacated and he subsequently lost one month’s rent; and the amount withheld from the security deposit was for that lost rent.

The Complainant is seeking an Order from the Commission for the Respondent to refund her security deposit plus accrued interest, in the amount of \$2,016.00, and a penalty of up to

three times that amount based on the Respondent's unreasonable withholding of her 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 December 4, 2012, the Commission voted to hold a public hearing on January 29, 2013. The public hearing in the matter of Tauna Stinson v. Douglas Avison, relative to Case No. 33420, was held on January 29, 2013.

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, Tauna Stinson; and the Respondent, Douglas Avison.

Without objection, the Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1.

FINDINGS OF FACT

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

1. On March 8, 2008, the Complainant and the Respondent, who is a Real Estate Agent for Remax Premiere Selections, signed a one year lease agreement ("Lease") for the rental of the Property, which commenced on April 1, 2008, and expired on March 31, 2009, for a monthly rent of \$1,700.00 (Commission Exhibit No. 1 – Page 7 through 23).

2. On or about March 8, 2008, the Complainant paid the Respondent a security deposit, in the amount of \$1,800.00; which amount is receipted in the Lease (Commission Exhibit No. 1 – Page 8).

3. The Commission finds that by an e-mail dated June 26, 2012, the Complainant advised the Respondent of her intention to vacate the Property on July 31, 2012 (Commission Exhibit No. 1 – Page 70).

4. The Commission finds that by the same June 26, 2012, e-mail, the Complainant requested to be present at a final walkthrough inspection of the Property and also requested the return of her security deposit (Commission Exhibit No. 1 – Page 70).

5. The Commission finds that on June 27, 2012, the Complainant advised the Respondent that she did not want anyone in the house until she was totally moved-out (Commission Exhibit No. 1 – Page 72-73).

6. The Commission finds credible the testimony of the Respondent that there was no physical damage to the Property after the Complainant moved-out. There is no final inspection report on file.

7. The Complainant testified that it was her understanding that due to her mother's illness and anxiety, she had sufficient justification to deny access to any prospective tenants until she vacated the Property.

8. The Commission finds that on September 12, 2012, the Respondent sent, via certified mail, to the Complainant, a letter stating that he was keeping the security deposit plus interest to cover the damages he suffered due to the Complainant's breach of lease, in the amount of \$2,100.00 (Commission Exhibit No. 1 – Page 25).

9. The Commission finds that the Respondent failed to credit the Complainant's security deposit with the proper amount of simple interest which had accrued on her \$1,800.00 security deposit from the commencement of her tenancy March 8, 2008, until the termination of her tenancy, July 31, 2012, in the amount of \$216.00 (Commission Exhibit No. 1 – Page 25).

10. The Commission finds that the Respondent advertised the Property in the Metropolitan Regional Information Systems, Inc. (MRIS) on July 16, 2012, with an availability date of August 4, 2012 (Commission Exhibit No. 1 – Page 29).

11. The Commission finds credible the Respondent's testimony that he suffered damages due to lost rent since he was not able to re-rent the Property until September 1, 2012 (Commission Exhibit No. 1 – Page 58 through 79).

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) of the Real Property Article states: "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". The Commission concludes that the Respondent did send such a list to the Complainant within 45 days after her tenancy ended; therefore, he is in compliance with Section 8-203 (g) (1) of the Real Property Article.

2. Pursuant to Section 8-203 (a) (3) of the Real Property Article states: "Security deposit" means any payment of money, including payment of the last month's rent in advance of the time it is due, given to a landlord by a tenant in order to protect the landlord against nonpayment of rent, damage due to breach of lease, or damage to the leased premises, common areas, major appliances, and furnishings.

3. Paragraph 17 (c) of the Lease – Landlord/Agent Access to Premises (Commission Exhibit No. 1 – Page 11), states the following:

“...c. during the last two months of the term on this Lease or any extension thereof, Landlord/Agent may put the premises on the market for sale or rent and may place a “For Rent” or “For Sale” sign on the premises. Tenant agrees to cooperate with Landlord/Agent in showing the property. Tenant is advised that on occasion he or she may be asked to exhibit the premises in less than twenty-four (24) hours notice...”

The Commission concludes that the Complainant did not have the right to refuse access to the Property based on her family circumstances; consequently, the Complainant breached the Lease by not allowing the Respondent to show the Property to prospective tenants as established in the Lease.

4. The Commission concludes that the Respondent’s failure to pay the Complainant the correct amount of interest which had accrued on her security deposit constitutes a violation of Section 8-203 (e) (1) of the Real Property.

5. The Commission concludes that the Complainant did owe rent due to the breach of lease in the amount of \$2,100.00, which exceeded the Complainant’s security deposit (\$1,800.00) plus accrued interest (\$216.00). Therefore, the Complainant has caused a defective tenancy and the Respondent is entitled to retain the entire security deposit plus accrued interest.

ORDER

In view of the foregoing, the Commission concludes that the Respondent properly assessed \$2,100.00 against the Complainant for damages due to breach of lease and that the Respondent was within his rights to retain the Complainant’s entire security deposit plus accrued interest in the total amount of \$2,016.00. Therefore, Case No. 33420, Tauna Stinson v. Douglas Avison is DISMISSED.

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

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.

Denise Hawkins, Panel Chairperson
Commission on Landlord-Tenant Affairs