

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

In the matter of:	*	
	*	
Santiago Gomez-Acebo	*	
	*	
Complainant	*	
	*	
V.	*	Case No. 33425
	*	
Abraham Dabela and	*	
Ellene Dabela	*	
	*	
Respondents	*	
	*	

Rental Facility: 24 Pepperell Court, Bethesda, MD 20817 (License # 7182)

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 14th day of February, 2013, found, determined, and ordered, as follows:

BACKGROUND

On August 31, 2012, Santiago Gomez-Acebo ("Complainant"), former tenant at 24 Pepperell Court, Bethesda, 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 he alleged that his former landlords, Abraham and Ellene Dabela, owners of the Property (“Respondents”), assessed unjust charges against his security deposit after the termination of his tenancy in violation of Maryland Code (1954, 2003 Repl. Vol., 2007 Suppl.), Real Property Article, Section 8-203(e)(1) (“Real Property Article”).

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

The Respondents contend that the Complainant damaged the Property in excess of ordinary wear and tear during his tenancy, and that the amount withheld from the security deposit was for actual cost incurred to repair those damages.

The Complainant is seeking an Order from the Commission for the Respondents to refund the balance of his security deposit plus accrued interest, in the amount of \$5,054.77, a penalty of up to three times that amount based on the Respondents' unreasonable withholding; and an award for reasonable attorney's fees.

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 24, 2013. The public hearing in the matter of Santiago Gomez-Acebo v. Abraham and Ellene Dabela relative to Case No. 33425, was held on January 24, 2013.

The record reflects that the Complainant and the Respondents were given proper notice of the hearing date and time. Present and sworn in the hearing and presenting evidence were the Attorney for the Complainant, David Vidal-Cordero, Respondents Abraham and Ellene Dabela, and their attorney, Matthew Moore.

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 Respondents: (1) a proposal issued by E. R. Remodeling, dated July 17, 2012, for repair work to be performed at the Property, identified as Respondents' Exhibit No.1; and, (2) a series of undated pictures taken at the Property after the tenant vacated it, showing damages to the wooden floor and the window, identified as Respondents' Exhibit No. 2.

David Vidal-Cordero, Attorney for the Complainant, objected to a letter dated September 26, 2012, included in Commission Exhibit #1, Page 36 through Page 41, submitted to the Department by the Respondents' son, G. Abraham Dabela, and requested it be excluded from the record, since neither he nor his client received such a document. The objection was overruled but noted for the record.

FINDINGS OF FACT

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

1. On August 29, 2007, the Complainant and the Respondents signed a five year lease agreement ("Lease") for the rental of the Property, which commenced on September 1, 2007, and expired on August 31, 2012, for an initial monthly rent of \$4,500.00 (Commission Exhibit No. 1 – Pages 8 through 23).

2. On or about August 29, 2007, the Complainant paid the Respondents a security deposit, in the amount of \$4,500.00; which amount is receipted in the Lease (Commission Exhibit No. 1 – Page 8).

3. The Commission finds that by correspondence dated May 15, 2012, the Complainant (who is a Diplomat), advised the Respondents, that due to a new assignment outside the USA, he was terminating the Lease effective June 30, 2012 (Commission Exhibit No. 1 – Page 82).

4. The Commission finds that by the same May 15, 2012, correspondence, the Complainant requested that the Respondents conduct a final walkthrough inspection of the Property on June 30, 2012, in the afternoon, since he was leaving the country the next day (7/1/12); (Commission Exhibit No. 1 – Page 82).

5. The Commission finds that on June 30, 2012, the Complainant vacated the Property having paid rent in full through that date.

6. The Commission finds credible the testimony of Respondent Ellene Dabela that on or about July 2, 2012, she conducted an inspection of the Property. The Commission finds that there is no final inspection report of the Property on file.

7. The Commission finds that by a letter dated July 3, 2012, sent via certified mail, David Vidal-Cordero, advised the Respondents that he was mailing the Property keys to them (Commission Exhibit No. 1 – Page 85-86).

8. The Commission finds that on August 13, 2012, the Respondents sent a letter to the Complainant describing the damages assessed against his security deposit (Commission Exhibit No. 1- Page 29), stating the following:

“...Return of Security Deposit, 24 Pepperell Court, Bethesda, Maryland 20817:

Dear Mr. Vidal-Cordero:

Initial Deposit:	\$4,500.00
Accrued Interest:	\$ 245.79
<u>Less Total Damages:</u>	<u>\$4,693.06</u>
	\$ 52.73

Pursuant to Md. Code, Real Prop. §8-203.1, enclosed for return to Mr. Gomez-Acebo is a refund check in the amount of \$52.73 (Fifty two dollars and seventy three cents) representing the remaining balance of Mr. Gomez-Acebo’s security deposit after reduction for actual repair costs incurred for damage in excess of ordinary wear and tear and certain breaches of the Single Family Dwelling Lease Montgomery County, Maryland, signed among us August 29, 2007 (together with riders and annexes, the “Lease Agreement”). Below please find an itemization of damages and repair costs.

Itemized Statement of Damages and Repair Costs

(1) Clogged kitchen sink drain (service date 12/07/07) \$ 472.50

(2) Pest control services (4/5/09; 6/17/10)	\$ 610.00
(3) Clogged bathroom toilets (3) (repair invoice date 4/25/11)	\$ 350.00
(4) Clogged bathroom toilet (repair invoice date 2/8/12)	\$ 125.00
(5) Broken coil burners in brand-new stovetop:	
Service charge to assess damage (service date 9/7/11)	\$ 147.00
<u>Cost of cooktop (replaced due to irreparable misuse)</u>	<u>\$1,188.56</u>
(6) Damaged floors lack of maintenance	\$1,400.00
(7) Broken window 2 nd floor	<u>\$ 400.00</u>
Total Damages	\$4,693.06

9. The Commission finds that, enclosed with the August 13, 2012, letter, there was a refund check, made payable to the Complainant, in the amount of \$52.73, which represented the remainder of security deposit plus accrued interest (\$4,745.79) minus deductions for damages (\$4,693.06) (Commission Exhibit No. 1 – Page 29).

10. The Commission finds credible Respondent Ellene Dabela’s testimony that as an experienced landlord it is her business practice to wait until the end of the tenancy to charge the tenants for maintenance items she considers fall under the tenants’ responsibility under the Lease.

11. The Commission finds credible Respondent Ellene Dabela’s testimony that some of the repair work listed on a proposal provided by E. R. Remodeling on July 7, 2012 (Respondent’s Exhibit No. 1), was performed and paid for, at a later date.

12. The Commission finds that the charges for the repair of the wood floor assessed against the Complainant’s security deposit plus interest, was finished and paid for on September 15, 2012 (Commission Exhibit No. 1 – Page 52-53), 77 days after the termination of the Complainant’s tenancy.

13. The Commission finds that the charge for the repair of the window assessed against the Complainant’s security deposit plus interest was not for the amount claimed (\$400.00). This work was finished and paid for on September 15, 2012 (Commission Exhibit No. 1 – Page 54), 77 days after the termination of the Complainant’s tenancy, and the actual cost was \$100.00.

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. Section 29-30(a)(3), "Obligations of landlords," of the Montgomery County Code, states, in pertinent part regarding a landlord's obligation to make repairs to a rental unit, that:

- (a) Each landlord must reasonably provide for the maintenance of the health, safety, and welfare of all tenants and all individuals properly on the premises of rental housing. As a part of this general obligation, each landlord must:
- (3) Make all repairs and arrangements necessary to put and keep the dwelling unit and the appurtenances in as good a condition as they were or should - by law or agreement have been, when the tenancy began. However, a lease for a single-family rental facility may provide that a tenant is responsible, up to a maximum annual amount set by executive regulation, for the costs of maintenance of the dwelling unit, but not for replacement of or repairs to structural elements of the building, major appliances, or electrical, plumbing, heating, or air conditioning systems unless replacement or repair of these items is required because of actions of the tenant or any person for the tenant is legally responsible.

2. The Commission concludes that the Respondents did not provide sufficient probative evidence to support the contention that the Complainant was negligent in the maintenance of the plumbing elements, the housekeeping of the Property and/or the misuse of the appliances. Absent that evidence, these maintenance issues are the responsibility of the Respondents.

3. 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 Respondents sent the list required by Section 8-203 (g)(1) to the Complainant within 45 days after the termination of his tenancy.

4. The Commission concludes that the Respondents failed to produce any probative evidence that they incurred actual costs to repair damages to the wooden floor or the window at the Property, within 45 days after the termination of the Complainant's tenancy. Therefore, the charges assessed against the security deposit plus interest in the amount of \$1,800.00, are not allowed.

5. The Commission concludes that the Respondents' failure to pay the Complainant the right amount of interest which had accrued on his security deposit constitutes a violation of Section 8-203 (e) (1) of the Real Property, and has created a defective tenancy.

6. The Commission concludes that the failure by the Respondents to refund the Complainant's security deposit plus accrued interest was unreasonable and constituted a violation of Section 8-203 (e)(4) of the Real Property Article. To award a penalty, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Respondents' conduct in wrongfully withholding the Complainant's security deposit and whether or not the Respondents acted in bad faith or have a prior history of wrongful withholding of a security deposit. While there is no history of the Respondents appearing before the Commission, their admitted routine practice of non-compliance with the Real Property Article rises to the level of bad faith and egregiousness necessary to award a penalty. Therefore, an additional award of \$5,054.77 as a penalty is granted.

7. The Complainant's attorney, David Vidal-Cordero, originally submitted with the complaint a request for his services in the amount of \$7,800.00 (Commission Exhibit No. 1 – Page 7); this amount was later amended to \$8,400.00 (Commission Exhibit #1 – Page 3). Section 8-203(e)(4) of the Real Property Article provides that if the landlord, “without a reasonable basis, fails to return any part of the security deposit, plus accrued interest, within 45 days after the termination of the tenancy, the tenant has an action of up to threefold of the withheld amount plus reasonable attorney's fees.” The panel concludes that since the Attorney's claim of \$8,400.00 was not itemized, and the issues involved in the case were not extremely complex in nature, an award for attorney's fees in the amount of \$2,000.00 is reasonable.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondents must pay the Complainant **\$12,109.54** which sum represents the Complainant's security deposit (\$4,500.00), plus accrued interest (\$607.50), less the amount previously refunded to the Complainant (\$52.73), plus \$2,000.00 attorney's fees, and a penalty of \$5,054.77.

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

To comply with this Order, Respondents, Abraham and Ellene Dabela, 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 Santiago Gomez-Acebo, in the amount of \$12,109.54.

The Respondents, Abraham and Ellene Dabela, are 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 Respondents have 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 Respondents choose to appeal the Commission's Order, they must post a bond with the Circuit Court in the amount of the award (\$12,109.54) if a stay of enforcement of this Decision and Order is sought.

Galia Steinbach, Panel Chairperson
Commission on Landlord-Tenant Affairs