

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

In the matter of:	*	
	*	
Richard Judy, Jr. and Courtney Biefeld	*	
	*	
Complainants	*	
	*	
V.	*	Case No. 33503
	*	
Dian John	*	
	*	
Respondent	*	
	*	

Rental Facility: 851 Loxford Terrace, Silver Spring, MD 20901 (License # 60761)

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 8th day of March, 2013, found, determined, and ordered, as follows:

BACKGROUND

On October 18, 2012, Richard Judy, Jr. and Courtney Biefeld ("Complainants"), former tenants at 851 Loxford Terrace, 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, Dian John, owner of the Property ("Respondent"), assessed unjust charges against their security deposit plus interest 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”).

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: (1) the Complainants damaged the Property in excess of ordinary wear and tear during their tenancy; (2) the Complainants abandoned the Property one month earlier than the lease stipulated; (3) she incurred actual expenses to repair those damages which justified the withholding of the entire security deposit plus accrued interest; and, (4) the Complainants have an outstanding balance due to her in the amount of \$315.00.

The Complainants are seeking an Order from the Commission for the Respondent to refund their entire \$2,700.00 security deposit plus accrued interest (\$162.00), for a total of \$2,862.00, a penalty of up to three times that amount based on the Respondent's unreasonable withholding of their entire security deposit plus interest; and, an award of 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 January 8, 2013, the Commission voted to hold a public hearing on February 26, 2013. The public hearing in the matter of Richard Judy, Jr. and Courtney Biefeld v. Dian John, relative to Case No. 33503, was held on February 26, 2013.

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 Complainant Richard Judy, Jr., his attorney, Kenneth Sigman, Respondent Dian John and her witness, Contractor Hector Hamilton.

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 exhibit offered by the Respondent: (1) a print-out of a personal e-mail containing an explanation of the steps to follow to form a valid contract; specifically the definition of the word offer, identified as Respondent's Exhibit No.1. The Commission also entered into evidence the following exhibit offered by the Complainants: (1) Kenneth Sigman's report relative to attorney's fees in the amount of \$3,355.00, identified as Complainants' Exhibit No. 1.

FINDINGS OF FACT

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

1. On July 15, 2010, the Complainants and the Respondent signed a two year lease agreement ("Lease") for the rental of the Property, which commenced on August 1, 2010, and expired on July 31, 2012, for an initial monthly rent of \$2,200.00 (Commission Exhibit No. 1 – Pages 5 through 15).
2. On or about July 15, 2010, the Complainants paid the Respondent a security deposit, in the amount of \$2,700.00; which amount is receipted in the Lease; this amount includes a \$500.00 pet deposit (Commission Exhibit No. 1 – Page 6 and Page 12).
3. The Commission finds credible Complainant Richard Judy's testimony that sometime in the beginning of June 2012, the Respondent verbally offered them the option of vacating the Property one month earlier than the vacate date stipulated in the Lease (7/31/12).
4. The Commission finds that by an e-mail dated June 6, 2012 (Commission Exhibit No. 1 – Page 48), the Respondent advised the Complainants of the following:

“...I tried reaching you yesterday to no avail so I left you a vm. Seeing that I have not heard from you, I thought I’d send you a quick email.

As indicated in my telephone message, I will stop by on Saturday, June 9, 2012 between noon and 1:00 pm to show the house. My realtor will also put a lockbox on the house within the next week to facilitate the showing of the house. In our last conversation, you mentioned that you’d started moving your things to your new place. If this is still the case, will you consider terminating your lease one month early (June 30, 2012)?...”

5. The Commission finds that by an e-mail dated June 9, 2012 (Commission Exhibit No. 1 – Page 44), the Complainants advised the Respondent of the following:

“...I know we have spoken about it but I wanted to get you an email confirmation that we will be out of Loxford by the end of the day on Saturday, June 30. Thanks and please let me know if I need to contact the real estate agent for anything...”

6. The Commission finds credible Complainant Richard Judy’s testimony that they vacated the Property on June 30, 2012, having paid rent in full through that date.

7. The Commission finds that on July 1, 2012, a final walkthrough inspection took place with Complainant Richard Judy, the Respondent and her agent, Hubert Brucker. There is no final inspection report of the Property on file.

8. The Commission finds that on August 15, 2012, 46 days after the Complainants vacated the Property, the Respondent sent a letter to them describing the damages assessed against their security deposit (Commission Exhibit No. 1- Page 16-17), as follows:

“...Below is the disposition of your security deposit on the 851 Loxford Terrace, Silver Spring, MD, property:

Rent		\$2,310.00
July, 2012 rent	\$2,310.00	
Repairs		\$ 505.00
Storm door	\$200.00	
Broken stove knobs	\$ 50.00	
Broken refrigerator shelves	\$200.00	
Replace extra large grill cover	\$ 55.00	
Cleaning		\$ 200.00
Stove		
2 Bathrooms		
Grill		
TOTAL		\$3,015.00

Twenty two hundred dollars of the security deposit and the five hundred pet fee was used to offset the expenses/repairs identified above. The outstanding amount that you owe is three hundred and fifteen dollars...”

9. The Commission finds that the Respondent did not provide sufficient probative evidence/documentation that there were damages in excess of ordinary wear and tear in the Property, after the Complainants vacated, or that she incurred actual cost to repair them.

10. The Commission finds that the testimony of Hector Hamilton, Respondent’s 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.

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 \$2,700.00 security deposit from the commencement of their tenancy, August 1, 2010, until the termination of their tenancy, June 30, 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 Complainants 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. Furthermore, the Commission concludes that the Respondent failed to demonstrate that the damages claimed for repairs, were for actual cost incurred. Therefore, the charges assessed against the security deposit plus interest in the amount of \$705.00, are not allowed.

2. Pursuant to the e-mail exchanges between the Respondent and the Complainants, dated June 6, 2012, and June 9, 2012, the Commission concludes that the tenancy ended on June 30, 2012, and no further rent was due thereafter. Therefore, the Commission has determined that the withholding of \$2,310.00 in rent for the period July 1, 2012, through July 31, 2012, constituted a mishandling of the Complainants’ security deposit.

3. The Commission concludes that the Complainants do not owe the Respondent the amount of \$315.00, as claimed on the August 15, 2012, list of damages.

4. 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.

5. 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.

6. The Complainants' attorney, Kenneth Sigman, submitted a report with an itemized list of charges relative to this case (Complainants' Exhibit No. 1) in the amount of \$3,355.00. 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 issues involved in the case were not extremely complex in nature, an award for attorney's fees in the amount of \$1,000.00, is reasonable.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondent must pay the Complainants **\$3,862.00**, which sum represents the Complainants' security deposit (\$2,700.00), plus accrued interest (\$162.00), plus \$1,000.00 attorney's fees.

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

To comply with this Order, Respondent Dian John 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 Richard Judy, Jr. and Courtney Biefeld, in the amount of \$3,862.00.

Respondent Dian John, 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 (\$3,862.00) if a stay of enforcement of this Decision and Order is sought.

Laura Murray, Panel Chairperson
Commission on Landlord-Tenant Affairs