

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

In the matter of:	*	
	*	
Dorothy Pitts	*	
	*	
Complainant	*	
	*	
V.	*	Case No. 33574
	*	
William Perry	*	
	*	
Respondent	*	
	*	

Rental Facility: 4515 Adrian Street, Rockville, MD (Unlicensed)

**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 11<sup>th</sup> day of April 2013, found, determined, and ordered, as follows:

**BACKGROUND**

On November 28, 2012, Dorothy Pitts ("Complainant"), former tenant at 4515 Adrian Street, Rockville, MD ("Property"), an unlicensed 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, William Perry, owner of the Property (“Respondent”), assessed unjust charges against her security deposit after the termination of her 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 she did not damage the Property in excess of ordinary wear and tear during her tenancy, and therefore, the Respondent had no reasonable basis to withhold any portion of her security deposit plus accrued interest.

The Respondent contends that the Complainant damaged the Property in excess of ordinary wear and tear during her tenancy, and that the amount withheld from the security deposit was for actual cost incurred to repair those damages which justified the withholding of the security deposit plus accrued interest, less \$146.00, which he returned to the Complainant.

The Complainant is seeking an Order from the Commission for the Respondent to refund the balance of her security deposit plus accrued interest, in the amount of \$1,603.00 and a penalty of up to three times that amount based on the Respondent's unreasonable withholding.

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 March 19, 2013. The public hearing in the matter of Dorothy Pitts v. William Perry relative to Case No. 33574, was held on March 19, 2013.

The record reflects that the Complainant and the Respondent were given proper notice of the hearing date and time. Present and sworn in the hearing and presenting evidence were the Complainant Dorothy Pitts, her witness Steven Smith and the Respondent William Perry.

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, without objection, the following exhibits offered by the Complainant: (1) a series of undated pictures (22) relative to the exterior condition of the Property at time of move-out, identified as Complainant's Exhibit No. 1; (2) copy of an e-mail dated March 17, 2013, from Annette Olmert, stating the condition in which the Property was left the day the Complainant moved-out, identified as Complainant's Exhibit No. 2; (3) copy of a letter dated August 20, 2012, signed by the Respondent's agent, Will Marin, providing a reference regarding the Complainant's tenancy, identified as Complainant's Exhibit No. 3; (4) copy of a letter dated November 12, 2012, sent by the Complainant to the Respondent and to his agent, requesting the return of her security deposit; identified as Complainant's Exhibit No. 4; and, (5) Copy of summons served to the Complainant relative to District Court Case No. 060100011262013, identified as Complainant's Exhibit No. 5. The Commission also entered, without objection, into evidence the following exhibit offered by the Respondent: (1) copy of receipt for the purchase of a dishwasher, dated March 9, 2010, identified as Respondent's Exhibit No. 1.

The Commission decided to keep the record open for seven calendar days, until March 26, 2013, so: (1) the Respondent could submit a complete rental ledger relative to the Complainant's tenancy; and, (2) the Complainant could submit proof of all her rental payments throughout her tenancy as well as proof of payment of her utility bills. On March 22, 2013, the Respondent submitted via e-mail the following: (1) an account summary relative to the Property dated December 20, 2012; (2) a rental management account relative to the Property, dated September 14, 2012; (3) a rental management account relative to the Property dated April 30, 2012; and, (4) a receipt from Home Depot dated March 24, 2012, for a plumbing purchase in the amount of \$18.48; which was marked as Respondent's Exhibit No. 2. All this information was forwarded to the parties. On March 25, 2013, the Complainant submitted the following: (1) copy of rent payment for January 2012, (2) copy of rent payment for February 2012; (3) copy of rent payment for March 2012; (4) copy of rent payment for September 2012; (5) a letter from the Washington Gas Company, dated October 31, 2011; (6) an e-mail dated March 20, 2013, sent by the Complainant to the Respondent relative to an outstanding gas bill; and, (7) a customer profile relative to gas usage; which was marked as Complainant's Exhibit No. 6,. All this information was forwarded to the parties. The record was closed on March 26, 2013.

### **FINDINGS OF FACT**

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

1. On September 1, 2010, the Complainant and the Respondent, representing at the time, Prescott Perry, LLC, signed a one year lease agreement (“Lease”) for the rental of the Property, which commenced on September 1, 2010, and expired on August 31, 2011, for a initial monthly rent of \$1,650.00 (Commission Exhibit No. 1 – Pages 3 through 17).

2. On or about September 1, 2010, the Respondent agreed to accept five equal installments of \$330.00 from the Complainant as payment of the security deposit, for a total of \$1,650.00; which amount is receipted in the Lease (Commission Exhibit No. 1 – Page 3).

3. The Commission finds that at the bottom of the Lease Addendum the following handwritten note states:

“...Landlord agrees for security deposit to be paid in five equal installments of \$330.00 in addition to rent for first 5 months of term. In consideration, tenant agrees to waive interest on said deposit for first year...” (Commission Exhibit No. 1 – Page 14).

4. On September 1, 2011, the Complainant and the Respondent signed a Lease renewal for the rental of the Property, which commenced on September 1, 2011, and expired on August 31, 2012, for a new rental amount of \$1,716.00 (Commission Exhibit No. 1 – Pages 18 through 32).

5. The Commission finds that the Respondent did not obtain a rental license throughout the whole two years tenancy, according to the Department’s Licensing Unit records.

6. The Commission finds that by a letter dated July 2, 2012, the Respondent informed the Complainant that he was not renewing her Lease and that she should vacate the premises at its expiration, August 31, 2012 (Commission Exhibit No. 1 – Pages 33 and 34).

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

8. The Commission finds that on October 3, 2012, a final walkthrough inspection of the Property was performed by the Complainant and the Respondent’s agent, Will Marin (Commission Exhibit No. 1 – Pages 49 through 51).

9. The Commission finds credible the Complainant and the Respondent’s testimony that an initial walkthrough inspection took place at the beginning of the tenancy. There is no record on file of an initial inspection report.

10. The Commission finds that the Respondent sent a letter dated November 8, 2012, to the Complainant describing the damages assessed against her security deposit (Commission Exhibit No. 1- Page 37), stating the following:

November 8, 2012 (Revised after water bill adjustment)

October repairs after D. Pitts moved out

Dorothy handed over the keys to Adrian on Oct.3, 2012 at that time a house inventory was filled out.

Security deposit collected by W. Perry **\$1,650.00**

Repairs done to 4515 Adrian St. (see receipts)	
Wood floor burn and scratches repair/replace wood	\$200.00
Clothes dryer repair	\$150.00
Replace dryer exhaust hose/extension	\$ 45.00
Arrears debt with William Perry (see mail)	\$453.27
Adrian St. final water bill	\$285.74
Dishwasher replacement (depreciated to repair \$450.00)	\$330.00
Stove clock repair	\$ 40.00

Deduct from deposit **\$1,504.01**

Returned to Dorothy Pitts **\$146.00**

11. The Commission finds that, enclosed with the November 8, 2012, letter, there was a Western Union Money Order No. 14-584645546, made payable to the Complainant, dated November 19, 2012, in the amount of \$146.00, which represented the remainder of her security deposit (\$1,650.00) minus deductions for damages (\$1,504.01), 50 days after the termination of the Complainant's tenancy (Commission Exhibit No. 1 – Page 43).

12. The Commission finds that the Complainant signed a receipt on November 19, 2012, relative to the refund received, 50 days after the termination of the Complainant's tenancy (Commission Exhibit No. 1 – Page 43).

13. The Commission finds that some of the charges assessed against the Complainant's security deposit were for damages within normal wear and tear, and some of the repairs were performed and the cost was incurred, after the 45 days time-frame period allowed by the Real Property Article.

14. The Commission finds credible the Complainant's testimony that she did damage the wood floor (a charge of \$200.00), and that she owed the final water bill for the Property (a charge of \$285.74).

15. The Commission finds that the charges for the dishwasher replacement (\$330.00) and the stove clock repair (\$40.00) assessed against the Complainant's security deposit plus interest were finished and paid for on November 26, 2012 and November 19, 2012, respectively (Commission Exhibit No. 1 – Pages 41 and 42), more than 45 days after the termination of the Complainant's tenancy.

16. The Commission finds that neither the Complainant nor the Respondent provided sufficient probative evidence regarding the \$453.27 rent balance charged against the Complainant's security deposit plus interest.

17. The Commission did not find credible the Respondent's testimony that the Property was damaged beyond normal wear and tear. Furthermore, the Respondent did not provide enough probative evidence of the damages claimed.

## 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 even though the Respondent’s letter to the Complainant shows a date of November 8, 2012, within 45 days after the termination of her tenancy; the Money Order enclosed with that letter was dated November 19, 2012, as well as the receipt acknowledging such refund signed by the Complainant, 50 days after the termination of the Complainant’s tenancy.

Therefore, the Commission concludes that the Respondent failed to send a list to the Complainant within 45 days after the termination of her tenancy, 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 his right to withhold any portion of the Complainant’s security deposit for damages.

2. Pursuant to Section 8-203 (e) (1), “Within 45 days after the end of the tenancy, the landlord shall return the security deposit to the tenant together with simple interest which has accrued in the amount of 3 percent per annum, less any damages rightfully withheld”

Pursuant to Section 8-208 (g)(2) of the Real Property Article, *Written leases , supplementary rights afforded by local law or ordinance; prohibited provisions not enforceable; damages; severability.*- “If the landlord includes in any lease a provision prohibited by this section or made unenforceable by § 8-105 or § 8-203 of this title, at any time subsequent to July 1, 1975, and tenders a lease containing such a provision or attempts to enforce or makes known to the tenant an intent to enforce any such provision, the tenant may recover any actual damages incurred as a reason thereof, including reasonable attorney’s fees.”

The Commission concludes that the Respondent’s notation in the Lease to forego interest on the security deposit for one year is in violation of Section 8-208 (g) (2) of the Real Property Article and unenforceable.

3. The Commission concludes that the Respondent’s failure to pay the Complainant the right amount of interest which had accrued on her security deposit constitutes a violation of Section 8-203 (e) (1) of the Real Property, and Section 8-208 (g) (2) of the Real Property Article, and has created a defective tenancy.

4. Although 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, as requested by the Complainant, 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

Complainants' 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, the Complainant's 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 Complainant **\$1,583.20** which sum represents the Complainant's security deposit (\$1,650.00), plus accrued interest (\$79.20), less the amount previously refunded to the Complainant (\$146.00).

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

To comply with this Order, Respondent, William Perry, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4<sup>th</sup> Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order, a check, made payable to Dorothy Pitts, in the amount of \$1,583.20.

The Respondent, William Perry, 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 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 (\$1,583.20) if a stay of enforcement of this Decision and Order is sought.

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David Goldberg, Panel Chairperson  
Commission on Landlord-Tenant Affairs