

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

In the matter of:

Yarimar Carrasquillo

Complainant

V.

Martin Y. Chen and Carol P. Chen

Respondents

*
*
*
*
*
*
*
*
*
*
*

Case No. 34661

Rental Facility: 10219 Arizona Circle, Bethesda, Maryland (License # 7012)

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 20th day of February, 2015, found, determined, and ordered, as follows:

BACKGROUND

On August 14, 2014, Yarimar Carrasquillo ("Complainant"), former tenant at 10219 Arizona Circle, Bethesda, MD ("Property"), a licensed rental property in Montgomery County, Maryland, filed a complaint with the Office of Landlord-Tenant Affairs (OLTA) within the Department of Housing and Community Affairs ("Department"), in which she alleged that her former landlords, Martin Y. Chen and Carol P. Chen, owners of the Property ("Respondents"): (1) failed to deliver the Property to her at the commencement of her tenancy, December 1, 2013, in a clean, habitable and sanitary condition, free of defects, and in complete compliance with all applicable laws, as required by Section 29-27(m), "Contents of lease," of the Montgomery County Code, 2001, as amended ("County Code"), and, (2) failed to make needed and necessary repairs to the Property in a timely and workmanlike manner, as required by the lease and 29-27(c) and 29-30(a), "Obligations of Landlords," of the County Code. Consequently, the Property was condemned by the County's Division of Housing and Code Enforcement on August 11, 2014.

The Complainant asserts that she was forced to move out immediately due to the condemnation of the Property and that she suffered unexpected expenses as a result. She is seeking: (1) early termination of her lease effective August 11, 2014; (2) the return of her security deposit (\$3,150.00) plus accrued interest (\$47.25); (3) reimbursement for rent she paid through August 31, 2014 (\$1,676.80); (4) compensation for damages she suffered in the amount of \$4,673.56;

and (5) trebled damages due to the unreasonable withholding of her security deposit plus interest.

The Respondents contend that the Complainant's negligence was the cause of the Property's condemnation; and he is requesting: (1) to keep the Complainant's security deposit plus interest; (2) the amount of \$5,000.00 he claims he paid as an insurance deductible; and (3) the rent for the 15 months remaining on the Complainant's lease.

After determining that the complaint was not susceptible to conciliation, the Department referred this case to the Commission for its review, and on December 2, 2014, the Commission voted to hold a public hearing on February 10, 2015. The public hearing in the matter of Yarimar Carrasquillo v. Martin Y. Chen and Carol P. Chen, relative to Case No. 34661, was held on February 10, 2015.

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, Yarimar Carrasquillo and Respondent Martin Y. Chen. Also present was Susana Capobianco, Investigator, Landlord-Tenant Affairs Office.

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 the record, without objection, the following exhibits offered by the Complainant: (1) A series of ten pictures relative to the sump-pump and the front and back of the Property, identified as Complainant's Exhibit No. 1; and, (2) A series of six pictures relative to attempted repairs performed to the sump-pump of the Property, identified as Complainant's Exhibit No. 2. The Commission also entered into the record, without objection, the following exhibit offered by the Respondent: (1) E-mail dated September 30, 2014, from Quiza Management, LLC, to the Respondent which contained an attachment from the Contractor, Toepfer Construction Company, Inc., describing work and cost for restoration/service/remodel of the Property, identified as Respondent'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 November 8, 2013, the Complainant and Respondent Martin Y. Chen signed a two year lease agreement for the rental of the Property ("Lease"), which commenced on December 1, 2013, and it is due to expire November 30, 2015, at a monthly rent of \$2,550.00 (Commission Exhibit No. 1 – Page 2 through 13).

2. On or about November 8, 2013, the Complainant paid the Respondent a security deposit in the amount of \$3,150.00 (\$2,550.00 plus \$600.00 pet deposit), which amount is receipted in the Lease (Commission Exhibit No. 1 – Page 3).

3. The Commission finds that by a letter dated May 22, 2014, the Complainant advised the Respondent of several maintenance/repairs needed at the Property (Commission Exhibit No. 1 – Pages 14 through 16A; and, Pages 20 through 22). This letter stated in pertinent part the following:

- “...1. There is a sewage odor in the laundry room every time I use the washer and dryer.
2. The AC unit is not working...
3. Water damage in the main room of the basement....
4. There is grass and weeds growing all over the patio...
5. The wooden door in the fence of the patio cannot be opened...
6. The garbage disposal was leaking since time of move-in....
7. Hot water does not last too long...
8. The dishwasher was not working at all at time of move-in...
9. The bathroom and the basement bedroom outlets don't work...
10. The kitchen sink does not drain unless the garbage disposal is on...”

4. The Commission finds that on May 27, 2014, the Complainant filed a complaint with the Department's Division of Housing and Code Enforcement. Case No. 120870 was opened and assigned to Inspector Lynn McCreary (Commission Exhibit No. 1 – Page 39).

5. The Commission finds that on August 11, 2014, Inspector McCreary, posted a condemnation placard at the Property (Commission Exhibit No. 1 – Page 29), and issued the Respondent an Emergency Field Notice, stating:

“This townhouse is hereby condemned as unfit for human habitation due to unsafe and unsanitary conditions due to a flood from 2nd floor bathroom. Human habitation is prohibited until all damage from flooding is corrected in a professional and workmanlike manner”

6. The Commission finds that the owner was put on notice to correct the violations noted in the August 11, 2014, Emergency Field Notice, **immediately** (Commission Exhibit No. 1 – Page 29) (*emphasis added*).

7. The Commission finds that as of December 2, 2014, the Property was not yet fixed and the condemnation was not yet lifted (Commission Exhibit No. 1 – Page 40).

8. The Commission finds credible the Complainant's testimony that when she reported the flooding problem to the Respondent and requested help with relocation, his answer was that it was not his problem.

9. The Commission finds that the Complainant's tenancy ended on August 11, 2014, after the Respondent was put on notice by the Montgomery County Housing Code Enforcement Section that the Property was unfit for human habitation (Commission Exhibit No. 1 – Page 29).

10. The Commission does not find credible the Respondent's testimony that the flood was intentionally caused by the Complainant because she wanted to move out.

11. The Commission does not find credible the Respondent's conclusion that there was no problem with any leaking pipes in the second floor bathroom. Furthermore, the Respondent did not provide any probative evidence to support his position.

12. The Commission finds that the Complainant's insurance determined that the water damage to the Property was due to old water pipes on the second floor which failed (Commission Exhibit No. 1 – Page 18).

13. The Commission finds that Toepfer Construction Company, Inc., contractor for the Respondent, performed an inspection of the Property on August 21, 2014, and determined that there was a pre-existing water intrusion issue affecting the rear bedrooms and the basement (Respondent's Exhibit No. 1).

14. The Commission finds that the Complainant incurred actual costs in the amount of \$4,673.50 (moving expenses, security deposit and rent for the new rental, time off from work) due to the condemnation of the Property based on the Respondent's failure to perform the required/necessary repairs (Commission Exhibit No. 1 – Page 28).

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 29-27, "Contents of lease," of the County Code, including Section 29-27(c), states that each lease for rental housing located in the County must:

(c) Acknowledge the landlord's responsibility for maintenance of the rental housing and incorporate by reference Chapter 8, Chapter 22, Chapter 26, and Chapter 59, as an express warranty of habitability and covenant to repair.

2. Section 29-30(a)(3), "Obligations of landlords," of the 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.

3. The Commission concludes that the Respondents had an obligation to perform the repairs requested by the Complainant and required by the Montgomery County Housing Code Enforcement Section, in a timely and workman manner as stated in the County Code. The Respondent's failure to repair the plumbing issues constitutes a violation of Sections 29-27(c) and 29-30 (a)(3) of the County Code and has created a defective tenancy.

4. Section 29-27 (m) – "Contents of lease", of the County Code provides that a lease for rental housing must:

(m) Contain a covenant that the landlord will deliver the leased premises and all common areas in a clean, habitable, and sanitary condition, free of rodents and vermin, and in complete compliance with all applicable laws. In a condominium or cooperative housing structure, the landlord is required to deliver only the dwelling unit in a clean, habitable and sanitary condition, free of rodents and vermin, and in complete compliance with all applicable laws.

5. The Commission concludes that based on the August 11, 2014, termination of the Complainant's tenancy, the Respondent owes the Complainant rent for the rental period from August 11, 2014, through August 31, 2014, in the amount of \$1,676.80.

6. The Commission concludes that the Respondent did not provide any probative evidence to demonstrate his contention that the Complainant was negligent and caused the flood at the Property.

7. The Commission concludes that the failure by the Respondent to comply with his obligations as a Landlord as stated in the County Code; and the withholding of the Complainant's security deposit plus interest, was unreasonable and in violation of § 8-203(f)(4) of the Real Property Article and caused a defective tenancy. 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 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 does rise to the level of bad faith or egregiousness necessary to award a penalty, based on his failure to perform the repairs at the Property, and by the Respondent's own testimony that he has been a landlord in Montgomery County for over 20 years and knows his obligations under the law. Therefore, the Commission awards trebled damages as a penalty for the unreasonably withheld amount.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondents must pay the Complainant **\$13,768.55** which sum represents: (1) refund to the Complainant for prepaid rent for the time period August 11, 2014, through August 31, 2014 (\$1,676.80); (2) award for damages the Complainant suffered due to the Respondent's breach of the lease (\$2,500.00); and, (3) the Complainant's security deposit (\$3,150.00), plus accrued interest (\$47.25) and, pursuant to §8-203 (f) (4) of the Real Property Article, trebled damages for the unreasonably withheld amount (\$9,591.75).

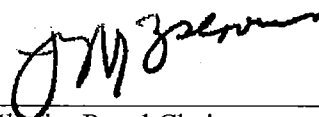
Commissioner Robyn Jones, Commissioner Kenneth Lemberg, and Commissioner Jeffrey Slavin, Panel Chairperson, unanimously concurred in the foregoing decision.

To comply with this Order, Respondents, Martin Y. Chen and Carol P. Chen, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within thirty (30) calendar days from the date of this Decision and Order, a check, made payable to Yarimar Carrasquillo, in the amount of \$13,768.55.

The Respondents, Martin Y. Chen and Carol P. Chen 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 (\$13,768.55) if a stay of enforcement of this Decision and Order is sought.



Jeffrey Slavin, Panel Chairperson
Commission on Landlord-Tenant Affairs