

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

In the matter of:

Laura John

Complainant

V.

Ali Daneshpour

Respondent

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Case No. 34743

Rental Facility: 8206 Old Georgetown Road, Bethesda, MD 20852 (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 17th day of March, 2015, found, determined, and ordered, as follows:

BACKGROUND

On September 24, 2014, Laura John ("Complainant"), former tenant at 8206 Old Georgetown Road, Bethesda, 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, Ali Daneshpour, owner of the Property ("Respondent") without a reasonable basis failed to refund any portion of her \$3,500.00 security deposit plus \$367.50 accrued interest after the termination of her tenancy, in violation of Section 8-203(e)(1) and (g)(1) of the Real Property Article, Annotated Code of Maryland (2015) ("Real Property Article").

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

The Respondent contends that: (1) the Complainant damaged the Property in excess of ordinary wear and tear during her tenancy, (2) the amount withheld from the security deposit was for actual cost incurred to repair those damages; and (3) he returned the amount of \$1,000.00 to one of the roommates (Alan Twohig).

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 \$2,867.50 (\$3,500.00-

\$1,000.00 + \$357.60), and a penalty of up to three times that amount based on the Respondent's unreasonable withholding from 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 January 6, 2015, the Commission voted to hold a public hearing on March 10, 2015. The public hearing in the matter of Laura John v. Ali Daneshpur, relative to Case No. 34743, was held on March 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, Laura John and her attorney, Matthew Nace; the Respondent, Ali Daneshpour; his attorney, Fredric Einhorn; and, Glenn Geramifar, Contractor, witness for the Respondent.

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 exhibits offered by the Respondent: (1) a picture of the door handle of the freezer, identified as Respondent's Exhibit No.1; (2) a series of five pictures showing damage to the walls throughout the Property, identified as Respondent's Exhibit 2; (3) copy of three canceled checks, including one dated October 4, 2014, issued to Alan Twohig in the amount of \$1,000.00, identified as Respondent's Exhibit 3; and, (4) a transcript of e-mails and/or text messages exchanged between the Respondent and the Complainant for the time period April 16, 2014 through August 27, 2014, identified as Respondent's Exhibit No. 4. Also, without objection, the Commission entered into evidence the following exhibit offered by the Complainant: (1) copy of an undated note issued by a former roommate (Ursula Coleman) in relation to her tenancy at the Property, identified as Complainant's Exhibit No. 1.

FINDINGS OF FACT

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

1. The Commission finds that on September 14, 2010, the Respondent, the Complainant and Ursula Coleman signed a two year lease agreement ("Lease") for the rental of the Property, which commenced on October 1, 2010, and expired on September 30, 2012, for a monthly rent of \$3,000.00 (Commission Exhibit No. 1 – Pages 10 through 22).

2. The Commission finds that Alan Twohig was listed as an occupant on the Lease (Commission Exhibit No. 1 – Page 12).

3. The Commission finds that on or about September 14, 2010, the Complainant and Ursula Coleman paid the Respondent a security deposit in the amount of \$3,500.00; which amount is receipted in the Lease (Commission Exhibit No. 1 - Page 11).

4. The Commission finds that on October 1, 2010, an addendum to the Lease was signed by the parties, which reads as follows:

"...Landlord and tenant agree that rent for October 1, 2012, through September 30, 2013, shall be \$3,100.00 per month with an increase to \$3,200.00 per month for October 1, 2013, through September 30, 2014..." (Commission Exhibit No. 1 – page 21).

5. The Commission finds that by the end of February 2012, Ursula Coleman moved-out of the Property and received \$1,000.00 security deposit return from the Respondent (Complainant's Exhibit No. 1).

6. The Commission finds that on or about May 1, 2013, Davin Laurell moved-into the Property in the place of Ursula Coleman, and paid the amount of \$950.00 as a security deposit (Commission Exhibit No. 1 – Page 23).

7. The record shows that the Property is unlicensed (Commission Exhibit No. 1 – Page 61). The Commission finds credible the Respondent's testimony that since he placed the Property on the market for sale, he did not renew his rental license for the time period July 1, 2014, through June 30, 2015.

8. The Commission finds credible the Complainant's testimony that on or about April 16, 2014, the Respondent verbally informed her that he had decided to sell the Property.

9. The Commission finds credible the Respondent's testimony that on or about April 17, 2014, he advised the Complainant that he had listed the Property for sale and that he was expecting her to move-out by June 1, 2014. At the time he offered compensation in the amount of \$700.00 to the Complainant, since he was expecting her to leave before the end of the Lease term September 30, 2014 (Commission Exhibit No. 1 – Page 5).

10. The Commission finds that on or about June 29, 2014, the Complainant advised the Respondent that she would be moving out by August 1, 2014 (Commission Exhibit No. 1 – Page 6; and, Respondent's Exhibit No. 4).

11. The Commission finds that on or about July 23, 2014, the Respondent and the Complainant agreed that a final walkthrough inspection would be performed on July 31, 2014, at 9:00 AM. This inspection was re-scheduled for August 1, 2014. (Commission Exhibit No. 1 – Page 6; and, Respondent's Exhibit No. 4).

12. The Commission finds credible the Complainant's testimony that she moved out on August 1, 2014, and that she left the keys in the mailbox at the Property on August 2, 2014 (Commission Exhibit No. 1 – page 8; and, Respondent's Exhibit No. 4).

13. The Commission finds that by an e-mail dated September 2, 2014, the Respondent advised the Complainant of the following: (Commission Exhibit No. 1 – Page 56)

“...This is what I have on the record: \$500.00 pet deposit and \$2,950.00 security deposit (\$3,000.00-\$1,000.00 refund to Ursula + \$950.00 paid by check to add to security deposit) for subtotal of \$3450. Amount of \$1,000.00 to be credited to Allen for his security deposit that brings the total to \$2,450.00. We are also crediting you \$225.00 for the interest as you requested. Meanwhile there is a \$700.00 rent balance plus \$245.00 freezer door damage and you are charged just 50% of the cost for the paint to take care of the miss match paint done by you and patching the walls for the first floor, hallway and upstairs bedrooms for the amount of \$650.00. According to our calculation (\$2,450.00+\$225.00-\$700.00-

- A) \$3,500.00 security deposit from October 2010, through April 2013, (2 years and seven months), interest accrued in the amount of \$262.50; and,
- B) \$3,450.00 security deposit from May 2013, through July 2014 (one year and 2 months), interest accrued in the amount of \$103.50.

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 "[i]f 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 the Respondent did not send a written list of damages to the Complainant within 45 days after her tenancy ended. Furthermore, the Respondent placed a stop payment on a refund check mailed to the Complainant on or about September 8, 2014; and did not demonstrate that his deductions for repairs were for actual costs incurred. Therefore, a violation of Section 8-203 (g)(1) has occurred and a defective tenancy has been created.

2. 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 Article.

3. The Commission concludes that the Respondent's failure to return the Complainant's security deposit plus accrued interest was unreasonable and has caused a defective tenancy.

4. Although the Commission concludes that the failure by the Respondent to refund the Complainant's 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 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 not rise to the level of bad faith or egregiousness necessary to award a penalty. Therefore, 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 **\$2,866.00** which sum represents the Complainant's security deposit (\$3,500.00), plus accrued interest (\$366.00), minus the amount refunded to roommate Twohig (\$1,000.00).

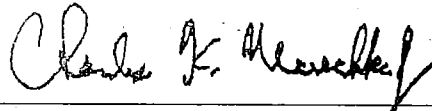
Commissioner Kenneth Lemberg, Commissioner Laura Murray, and Commissioner Charles Marschke, Panel Chairperson, unanimously concurred in the foregoing decision.

To comply with this Order, Respondent, Ali Daneshpour, 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 Laura John in the amount of \$2,866.00.

The Respondent Ali Daneshpour 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. Be advised that 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 (\$2,866.00) if a stay of enforcement of this Decision and Order is sought.



Charles Marschke, Panel Chairperson
Commission on Landlord-Tenant Affairs