

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

In the matter of:

Xiaozhen Li

Complainant

V.

Marilyn Madden

Respondent

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Case No. 35037

Rental Facility: 3712 Stewart Drive, Chevy Chase, MD (License # 39333)

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 5th day of August 2015, found, determined, and ordered, as follows:

BACKGROUND

On February 20, 2015, Xiaozhen Li ("Complainant"), former tenant at 3712 Stewart Drive, Chevy Chase, 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 she alleged that her former landlord, Marilyn Madden, owner of the Property ("Respondent"), without a reasonable basis failed to refund any portion of her \$1,150.00 security deposit plus \$51.75 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, 1999, as amended ("Real Property Article").

The Complainant is seeking the refund of her security deposit plus accrued interest (\$1,201.75) and a penalty of up to 3 times that amount for the unreasonable withholding.

The Respondent contends that the Complainant violated the terms of the rental contract by not reporting to her all problems requiring maintenance/repair and is responsible for any costs or damages resulting from the failure to report. Specifically, the Respondent states she incurred costs in the amount of \$27,634.00 to repair the basement of the Property resulting from two floods that the Complainant did not report to her.

After determining that the complaint was not susceptible to conciliation, the Department referred this case to the Commission for its review, and on May 5, 2015, the Commission voted to hold a public hearing on July 14, 2015. The public hearing in the matter of Xiaozhen Li v. Marilyn Madden, relative to Case No. 35037, commenced on July 14, 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, Xiaozhen Li, and the Respondent, Marilyn Madden.

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 page from the Landlord-Tenant Handbook regarding Obligations of Tenants, identified as Respondent's Exhibit No. 1, (2) a series of emails between the Complainant and Respondent dated September 10, 2014 regarding a water leak, identified as Respondent's Exhibit No. 2; (3) a series of emails dated November 24-26, 2014, regarding damage to the basement floor, identified as Respondent's Exhibit No. 3; (4) an email from the Respondent to the current tenants at the Property and a statement from the current tenants at the Property, Sandra and Joseph Mangin, identified as Respondent's Exhibit No. 4; and (5) an article from the Washington Post dated July 11, 2015, titled "Ignoring causes of basement floods could wash out a home sale" identified as Respondent's Exhibit No. 5.

The Commission decided to keep the record open for one week, until July 21, 2015, so the Complainant could be sent copies of the Respondent's exhibits and submit any comments regarding those exhibits. The Complainant was also given the opportunity to submit any exhibits she wants entered into the record and those would be forwarded to the Respondent for any comments as well. On July 15, 2015, the Complainant submitted a series of photographs depicting damage to the basement floor, identified as Complainant's Exhibit No. 1. These photographs were forwarded to the Respondent and the panel. The Complainant's and Respondent's comments were forwarded to each other and the panel. The record for this hearing was closed on July 21, 2015.

FINDINGS OF FACT

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

1. On February 4, 2013, the Respondent and the Complainant signed a one-year rental agreement ("Lease") for the rental of the Property (basement), which commenced on April 1, 2013, and expired on March 31, 2014, for a monthly rent of \$1,150.00.
2. On or about February 4, 2013, the Complainant paid the Respondent a security deposit in the amount of \$1,150.00, which is receipted in the Lease.
3. The Commission finds that the Lease signed by the parties does not contain any of the disclosures required by Section 8-203, "Security Deposits", or Section 8-203.1, "Security Deposit Receipt", of the Real Property Article.

4. At the end of the lease term the Complainant remained in the Property as a tenant on a month to month basis.

5. In September 2014, via e-mail, the Complainant advised the Respondent she was going to vacate the Property by November 30, 2014.

6. On November 30, 2014, the Complainant vacated the Property, having paid rent in full through that date.

7. By a letter dated February 28, 2015, three months after the termination of the Complainant's tenancy, the Respondent advised the Department in pertinent part the following:

"...The reason I did not refund her [Complainant] security deposit is because she violated the terms of the rental contract we both signed on February 4, 2013. The contract is attached. The rental contract states that "The tenant is responsible for...reporting all problems requiring maintenance/repair and for any costs or damages resulting from the failure to report a problem." During her tenancy, there were two flooding situations that she did not report to me. One was in July 2013 and the second was in September 2014..."

"...The total for both repairs was \$27,634.

According to the lease agreement, the tenant is responsible for these expenses. I have not asked her for this amount of money, but did feel justified in not returning her security deposit of \$1,150.00. I explained this to her in emails before and after she left..."

8. The Commission finds that the Respondent did not send the Complainant, to her last known address, within 45 days after the termination of her tenancy, an itemized list of damages being claimed against the Complainant's security deposit together with a statement of the costs actually incurred to repair that damage;

9. The Commission finds that the Respondent failed to credit the Complainant's security deposit with the correct amount of simple interest which had accrued on her \$1,150.00 security deposit from the commencement of her tenancy, April 1, 2013, until the termination of her tenancy, November 30, 2014.

10. The Commission finds credible the Respondent's testimony that she did not use the County's lease, was not aware of applicable security deposit law and did not comply with it.

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. The Commission concludes that the Respondent: (1) failed to have the proper security deposit disclosures in the Lease in violation of Section 8-203(f)(1) of the Real Property Article and pursuant to Section 8-203(f)(1)(vii) has forfeited the right to withhold any portion of the Complainant's security deposit for damages;

2. Pursuant to Section 8-203(g)(1) and (2) of the Real Property Article, which states: (1) 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, (2) If the landlord fails to comply with this requirement, the landlord forfeits the right to withhold any part of the security deposit for damages. Therefore, pursuant to Section 8-203(g)(2) of the Real Property Article, the Respondent has forfeited her right to withhold any portion of the Complainant's security deposit for damages.

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

4. The Commission concludes that the Respondent's failure to handle and dispose of the Complainant's security deposit (\$1,150.00) plus accrued interest (\$51.75) in accordance with the requirements of the applicable provisions of Section 8-203, "Security deposits," and Section 8-203.1, "Security Deposit Receipt" of the Real Property Article, has caused a defective tenancy.

5. Although the Commission concludes that the failure by the Respondent to refund any portion of the Complainant's security deposit plus accrued interest 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 and whether or not the Landlord acted in bad faith or has a 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, and 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 \$1,201.75, which sum represents the Complainant's security deposit (\$1,150.00) plus accrued interest (\$51.75).

Commissioner Beverly Flanagan, Commissioner Galia Steinbach, and Commissioner Charles Marschke Jr., Panel Chairperson, concurred unanimously in the foregoing decision.

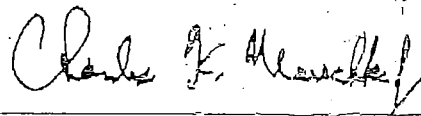
To comply with this Order, Respondent, Marilyn Madden, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within thirty

(30) calendar days of the date of this Decision and Order, a check, made payable to Xiaozhen Li, in the amount of \$1,201.75.

The Respondent, Marilyn Madden, 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 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, they must post a bond with the Circuit Court in the amount of the award (\$1,201.75) if she seeks a stay of enforcement of this Order.



Charles Marschke, Jr., Panel Chairperson
Commission on Landlord-Tenant Affairs