

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

In the matter of:

Tierni Ladas

Complainant

V.

Richard Schwartz

Respondent

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Case No. 35040

Rental Facility: 23045 Birch Mead Road, Clarksburg, MD (Rental Facility License #51253)

DECISION AND ORDER

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland (the "Commission"), pursuant to Sections 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code (2004), as amended ("County Code"), and the Commission having considered the testimony and evidence of record, it is therefore, this 7th day of July, 2015, found, determined, and ordered as follows:

BACKGROUND

On February 20, 2015, Tierni Ladas ("Complainant"), former tenant at 23045 Birch Mead Road, Clarksburg, 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, Richard Schwartz, owner of the Property, through his management company, K&Y American Investment Properties ("Agent"): (1) failed to deliver the Property to her at the commencement of her tenancy, February 1, 2015, in a clean, habitable and sanitary condition, and in complete compliance with all applicable laws, as required by Section 29-27(m) of the Montgomery County Code; 2001, as amended ("County Code") and Section 8-204 (b) and (d) of the Real Property Article, Annotated Code of Maryland, 1999, as amended ("Real Property Article"), and (2) failed to return her \$2,700.00 security deposit (\$1,950.00 + \$750.00 pet deposit), together with her first month's rent (\$1,950.00) after she advised the Agent that she was not taking possession of the Property and returned the keys on February 6, 2015.

The Complainant is seeking the refund of her security deposit plus first month rent (\$4,650.00) and a penalty of up to 3 times that amount for the unreasonable withholding.

The Respondent contends that the Complainant breached the lease by not taking possession of the Property after having signed a Lease and having been provided the keys for the Property on January 21, 2015, at the time the Lease was signed. Consequently, he suffered damages due to the Complainant's breach of lease that justified the withholding of the Complainant's security deposit and first month's rent (\$4,650.00).

After determining that Case No.35040 was not susceptible to conciliation, the Department referred this matter to the Commission for review, and on May 5, 2015, the Commission voted to conduct a public hearing in this matter, which was scheduled for June 16, 2015.

On June 7, 2015, the Respondent submitted a request for a continuance based on his Agent's ("Shannon Yang") inability to attend as she was called out of the country due to the illness of her mother. The Respondent further contended that because she dealt solely with the Complainant, he would be unable to present the best evidence without her being in attendance as he had no direct knowledge of these matters.

Respondent's request was forwarded to the Panel Chair on June 7, 2015, and was denied on June 10, 2015, based on the Panel Chair's conclusion that the Respondent had adequate time and notice to prepare for the June 16, 2015, hearing.

The public hearing in the matter of Tierni Ladas v. Richard Schwartz commenced on June 16, 2015 and concluded on that date.

The record reflects that the Complainant and the Respondent were given proper notice of the hearing date and time. Present and offering evidence were the Complainant, Tierni Ladas, and her realtors, Al and Mary Cardany, who appeared as witnesses; the Respondent, Richard Schwartz, his attorney, Badaki Ayodeji, and Tenson Ke, an Agent with K&Y American Investment Properties, the Respondent's Agent.

The Respondent's attorney objected to the denial of the Respondent's request for a continuance which was noted for the record. Without objection, the Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1. In addition, the Commission entered into the record, without objection, one exhibit from the Respondent, which consisted of: a copy of the "Property Management and Exclusive Rental Agreement" between the Respondent and K&Y American Investment Properties, dated January 1, 2014. It is noted that the form used for this agreement has a print date of January 2015; a letter dated March 10, 2015, from Respondent's Agent Shannon Yang to Landlord-Tenant Investigator Susana Capobianco; a copy of the "Multi-Family Rental Property in Montgomery County Addendum" signed by the Complainant and Respondent's Agent dated January 21, 2015; and a copy of two checks payable to the Respondent's Agent dated January 29, 2015, in the amount of \$1,950.00 noted as rental commission for 23045 Birch Meade and one dated March 6, 2015, in the amount of \$1,950.00 noted as an agent fee for 23045 Birch Meade; all collectively identified as Respondent's Exhibit No. 1.

FINDINGS OF FACT

Based on the testimony and evidence at the hearing, the Commission makes the following findings of fact:

1. On January 21, 2015, K&Y American Investment Properties ("Respondent's Agent" or "K&Y Investment") and the Complainant signed a two year lease agreement ("Lease") for the rental of the Property, which commenced on February 1, 2015, and was due to expire on January 30, 2017, for a monthly rent of \$1,950.00 (Commission's Exhibit No. 1, pages 15-28).
2. On or about January 21, 2015, the Complainant paid the Respondent's Agent a security deposit, in the amount of \$2,700.00 (\$750.00 pet deposit included); which amount is receipted in the Lease (Commission's Exhibit No. 1, pages 16 and 25).
3. On or about January 21, 2015, the Complainant also paid the Respondent's Agent, the first month's rent, in the amount of \$1,950.00 (Commission's Exhibit No. 1, page 3).
4. The Commission finds credible the Complainant's testimony that she was given the keys on January 21, 2015, but did not request those keys as she was still living in her former residence.
5. The Commission finds credible the Complainant's testimony that she did not enter the Property until February 2, 2015, whereupon she found it was not in clean condition (Commission's Exhibit No. 1, pages 70-71).
6. The Commission finds credible the Complainant's testimony that the heat was off and unable to be restored immediately (Commission's Exhibit No. 1, page 73).
7. The Commission also finds credible the testimony of the Complainant's Agent, Mary Cardany, that the Complainant was terminating the Lease based on the condition of the Property (Commission's Exhibit No. 1, page 43).
8. The Complainant reported the condition of the Property to the Respondent's Agent via text on February 3, 2015 (Commission's Exhibit No. 1, page 73), and her Agent Mary Cardany reported it again via text on February 4, 2015 (Commission's Exhibit No. 1, page 43).
9. The Commission does not find credible the testimony of the Respondent's Agent, Tenson Ke that the Property was in clean condition with newly cleaned carpet. Furthermore, the Respondent offered no probative evidence regarding cleaning services performed at the Property (Commission's Exhibit No. 1, pages 76-80).
10. On or about February 6, 2015, the Complainant returned the keys to the Property to the Respondent's Agent, Shannon Yang via first class mail (Commission's Exhibit No. 1, pages 5-6).

11. The Commission finds that the Property was re-rented on March 3, 2015, at a rental rate of \$2,020.00 per month (Commission's Exhibit No. 1, pages 31-42).

12. By an e-mail dated April 1, 2015, the Respondent advised the Office of Landlord-Tenant Affairs: "As I told you, I do not have a written contract with KY Realty. We have an active working relationship with them since the year 2000... We have a verbal contract, which we treat as binding. If we want to change it, we talk about it and agree." (Commission's Exhibit No. 1, page 49).

13. The Commission does not find credible the testimony of the Respondent or the Respondent's Agent concerning the non-existence of a written agreement establishing a formal agency relationship between the Respondent and K&Y Investment, given entry into the record of the Respondent's exhibit consisting of, among other things, a written contract between himself and K&Y Investment, which is dated January 1, 2014 on a form that apparently did not exist before January 2015 (Respondent's Exhibit No. 1).

14. The Commission finds that the Respondent did not present to the Complainant, at the commencement of the tenancy, a Property that was in clean, habitable and sanitary condition, free of rodents and vermin, and in complete compliance with all applicable laws.

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 29-27(m) of the County Code and paragraph 1 of the "Multi-Family Rental Property in Montgomery County Addendum" to the Lease, the Property was to be "delivered in clean, safe and sanitary condition, free of rodents and vermin, in a habitable condition, and in complete compliance with all applicable law."

2. Pursuant to Section 8-204(b) of the Real Property Article, "A landlord shall assure the tenant that the tenant, peaceably and quietly, may enter on the leased premises at the beginning of the term of any lease." The Commission finds that the Complainant never moved in and issued written notice to the Respondent on February 6, 2015, terminating the lease.

3. In accordance with Section 8-204(c) of the Real Property Article, "If the landlord fails to provide the tenant with possession of the dwelling unit at the beginning of the term of any lease, the rent payable under the lease shall abate until possession is delivered." Subsection (c) further authorizes the tenant to "terminate, cancel, and rescind the lease" upon "written notice to the landlord before possession is delivered."

4. Per Section 8-204(d) of the Real Property Article: "On termination of the lease under this section, the landlord is liable to the tenant for all money or property given as prepaid rent, deposit, or security." The Commission finds that lack of heat rendered the Property uninhabitable and has caused a defective tenancy. The Commission further finds that the Lease terminated on February 2, 2015, the date the Complainant entered and found these conditions.

5. Section 8-203(f)(1)(i) of the Real Property Article provides that "[t]he security deposit, or any portion thereof, may be withheld for unpaid rent, damage due to breach of lease or for damage by the tenant . . . in excess of ordinary wear and tear to the lease premises. . . ." The Complainant did not cause any damage to the Property or breach the Lease, to the contrary, the Respondent breached the Lease by failing to deliver the Property in habitable condition. The unreasonable withholding of the Complainant's security deposit created a defective tenancy.

6. Sections 8-203(e)(1) and (2) of the Real Property Article states: "... (1) Within 45 days after the end of the tenancy, the landlord shall return the security deposit to the tenant together with simple interest ..., less any damages rightfully withheld. The Respondent's failure to return any portion of the security deposit within this timeframe has caused a defective tenancy.

7. The Respondent's failure to handle and dispose of the Complainant's security deposit plus accrued interest in accordance with the requirements of the applicable provisions of Section 8-203, "Security deposits," along with the Respondent's failure to comply with Section 8-204, "Covenant of quiet enjoyment," of the Real Property Article, has caused a defective tenancy.

8. The failure by the Respondent to refund any of the Complainant's \$2,700.00 security deposit was unreasonable and constituted a violation of Section 8-203(e)(4) of the Real Property Article. The Respondent's failure to return the Complainant's rent payment of \$1,950.00 was a violation of Section 8-204(d) of the Real Property Article. To award a penalty, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Respondent's conduct in wrongfully withholding the Complainant's security deposit and whether or not the Respondent 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 does not rise to the level of bad faith and egregiousness necessary to award a penalty. Therefore, no penalty is granted in this case.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondent must pay the Complainant **\$4,650.00**, which sum constitutes the Complainants' security deposit (\$2,700.00) and one month prepaid rent (\$1,950.00).

Commissioner Lawrence Culleen, Commissioner Ken Lemberg, and Commissioner Richard Lashley, Panel Chairperson, concurred in the foregoing decision unanimously.

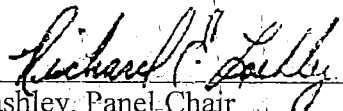
To comply with this Order, Respondent, Richard Schwartz, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order, a check made payable to Tierni Ladas, in the full amount of \$4,650.00.

The Respondent, Richard Schwartz, 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 \$500.00 civil fine (Class A violation), 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 pursuant to Section 29-48(c) of the County Code.

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. The Respondent is further advised that pursuant to Section 29-49 of the County Code, should the Respondent choose to appeal the Commission's Order, he must post a bond with the Circuit Court in the amount of the award (\$4,650.00) if he seeks a stay of enforcement of this Order.


Richard Lashley, Panel Chair
Commission on Landlord-Tenant Affairs