

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

In the matter of:

Pier Roviera and Elena Pezzana

Complainants

V.

Robert Lewis and Tracy Lewis

Respondents

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Case No. 35132

Rental Facility: 14041 Gorky Drive, Potomac, Maryland (License # 84771)

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 12th day of November, 2015, found, determined, and ordered, as follows:

BACKGROUND

On April 23, 2015, Pier Roviera and Elena Pezzana ("Complainants"), filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs ("Department"), against Robert Lewis and Tracy Lewis ("Respondents"), in which they alleged that the Respondents failed to refund their security deposit plus accrued interest after the early termination of their tenancy.

The Respondents contend that: (1) the Complainants damaged the Property in excess of ordinary wear and tear during their tenancy; (2) moved-out before the lease term expired; consequently, they lost rental income; and, (3) costs were incurred to repair the damages which justified the withholding of the Complainants' security deposit plus interest.

The Complainants are seeking an order from the Commission requiring the Respondents to refund their security deposit (\$12,200.00) plus accrued interest (\$183.00), for a total amount of \$12,383.00, and imposing a penalty of up to three times that amount based on the Respondents' unreasonable withholding of their security deposit.

After determining that the complaint was not susceptible to conciliation, the Department referred this case to the Commission for its review, and on September 1, 2015, the Commission voted to hold a public hearing on October 13, 2015. The public hearing in the matter of Pier Roviera and Elena Pezzana v. Robert Lewis and Tracy Lewis, relative to Case No. 35132 was held on October 13, 2015.

The record reflects that the Complainants and the Respondents were given proper notice of the hearing date and time. Present and sworn at the hearing and presenting evidence were the Complainants Pier Roviera and Elena Pezzana, Respondent Tracy Lewis, witness Sarah Funt, Real Estate Agent with Long and Foster Real Estate, Inc.; and, witness Joan Wolf, Real Estate Agent with Gerlach Real Estate, Inc. Respondent Robert Lewis was present but initially chose not to participate in the hearing and declined to take the oath at the onset of the meeting. 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 Respondent: (1) Copy of an undated text message provided by a Contractor – Bruce McConkey- relative to repairs made to the roof of a Property and an undated picture of the Property's pool, identified as Respondent's Exhibit No. 1, (2) Print-out from the Department's Code Enforcement Section detailing information of Case No. 127367, identified as Respondent's Exhibit No. 2; and (3) Undated picture of an empty pool, identified as Respondent's Exhibit No. 3.

The Commission decided to keep the record open for seven calendar days, until October 20, 2015, so the Respondents could submit a copy of the letter they alleged was sent to the Complainants containing the itemized list of damages assessed against the Complainants' security deposit plus interest; and, for the Complainants to submit evidence that an escrow account was opened with their bank to hold the rent for the month of April 2015.

On October 18, 2015, the Department received, via e-mail the documentation requested from only one of the parties, which was marked as Complainants' Exhibit No. 1. This exhibit was forwarded to all the parties. The Respondents did not submit the documentation requested. The record was closed on October 20, 2015.

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 June 4, 2014, the Complainants, the Respondents and Sarah Funt as Agent for the Respondents signed a one year lease agreement ("Lease") for the rental of the Property, which commenced on July 1, 2014, and expired on July 1, 2015, for a monthly rent of \$7,200.00 (Commission Exhibit No. 1 – Pages 2 through 17).

2. The Commission finds that on or about June 4, 2014 the Complainants paid the Respondents a security deposit in the amount of \$7,200.00, which is properly receipted in the Lease. Page 11 of the lease reveals an additional \$5,000.00 paid by the Complainants as pet deposit (Commission Exhibit No. 1 – Pages 3 and 11).

3. The Commission finds credible the Complainants testimony that even though the lease was signed with a starting date of July 1, 2014, they did not move-into the Property until July 31, 2014, and paid rent for the whole month of July 2014.

4. The Commission finds that on or about March 31, 2015, the Complainants advised the Respondents of their intention to vacate the Property by April 30, 2015 (Commission Exhibit No. 1 – Pages 57 through 60)

5. The Commission finds credible Complainant Pier Roviera's testimony that the reason for their early termination of the lease was because the Respondents did not fulfill their obligations to make the necessary repairs to keep the Property and its facilities in safe, healthy and operational conditions.

6. The Commission finds credible Respondent Tracy Lewis's testimony stating that they addressed the needed repairs of the Property and specifically that the pool repairs were going to be finished by Memorial Day weekend.

7. The Commission finds credible Complainant Pier Roviera's testimony that they moved-out of the Property on April 30, 2015.

8. The Commission finds credible Complainant's Pier Roviera's testimony that a final walkthrough of the Property was performed on April 30, 2015, at which time the keys for the Property were returned to the Respondents.

9. The Commission finds that the Complainants did not pay the last month's rent (April 2015) in the amount of \$7,200.00 (Commission Exhibit No. 1 – Page 101 and Complainants' Exhibit No. 1).

10. The Commission finds that the Respondents mailed to the Complainants via Certified Mail on May 22, 2015 an envelope, which was not delivered to the Complainants until June 23, 2015 (Commission Exhibit No. 1 – Page 88).

11. The Commission finds that inside the envelope there was a copy of an e-mail sent from Respondent Tracy Lewis to Respondent Robert Lewis, but addressed to Mr. Roviera (Commission Exhibit No. 1 – Page 66). This e-mail states the following:

“...Mr. Roviera

Attaches is an itemized list of things for which are owed to landlords of 14041 Gorky Dr.

List for tenant:

- (1) 3 months rent 7200.00 times 3
- (2) House cleaned 350.00
- (3) House treated for fleas and ticks estimated 200.00
- (4) Dishwasher replaced. To be determined
- (5) Outside grill fixed to be determined

- (6) Carpets cleaned 350.00
- (7) Microwave needs repair
- (8) Ceiling repaired and painted
- (9) Lawyers fees to be determined..."

12. The Commission finds that the Respondents did not provide any probative evidence that they incurred costs to repair the damages claimed on the "list of damages", since no documentation was provided to the Department (Commission Exhibit No. 1 – Page 102).

13. The Commission finds credible Respondent Tracy Lewis's testimony that they did not try to get a new tenant in the Property because they were advised by their Realtor not to do so, since that action may have relieved the Complainants of their responsibility for rent payments until July 1, 2015 (end of the lease).

14. The Commission finds credible Respondent Tracy Lewis's testimony that her husband Respondent Robert Lewis moved-back into the Property on June 1, 2015.

15. The Commission finds credible Respondent Tracy Lewis's testimony that she does not reside at the Property and that she is living at a different address.

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 the copy of an e-mail exchange between the Respondents sent to the Complainants, which did not include any statement of the cost actually incurred, is not in compliance with the law and this failure constitutes a violation of Section 8-203 (g) (1) of the Real Property Article, and therefore, pursuant to Section 8-203 (g) (2), the Respondents have forfeited their right to withhold any portion of the Complainants' security deposit for damages.

2. The Commission concludes that the Respondents' failure to pay the Complainants the right amount of interest which had accrued on their security deposit constitutes a violation of Section 8-203 (e) (1) of the Real Property, and has created a defective tenancy.

3. Section 8-207(a)(3), of the Real Property Article states:

(a) *Duty to mitigate damages.* — The aggrieved party in a breach of a lease has a duty to mitigate damages if the damages result from the landlord's or tenant's:...

(3) Termination of occupancy before the end of the term.

The Commission concludes that the Notice to Vacate submitted by the Complainants, even though it may have constituted a breach of the lease, was accepted by the Respondents, as they took possession of their Property on April 30, 2015. The Commission further concludes that the Respondents did not make any reasonable efforts to mitigate their damages caused by the Complainants' breach of the lease. Consequently, rent for the months of May 2015 and June 2015 is not due to them.

4. Based on the Complainants failure to pay for April's 2015 rent, the Commission concludes that the rent in the amount of \$7,200.00 is owed, and a late fee in the amount of \$360.00 is justified and due to the Respondents.

5. The Commission concludes that the failure by the Respondents to refund the Complainants' 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, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Respondents' conduct in wrongfully withholding the Complainants' security deposit and whether or not the Respondents acted in bad faith or have a prior history of wrongful withholding of a security deposit. While there is no history of the Respondents appearing before the Commission, their admitted testimony that they did not try to get a new tenant to cover for the alleged damages and their lack of cooperation with the Department rises to the level of bad faith and egregiousness necessary to award a penalty. Therefore, an additional award of \$4,823.00 as a penalty is granted.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondents must pay the Complainants **\$9,646.00** which sum represents the Complainants' security deposit (\$12,200.00), plus accrued interest (\$183.00), less the amount of the rent for the month of April 2015 plus late fee (\$7,560.00), and a penalty of \$4,823.00.

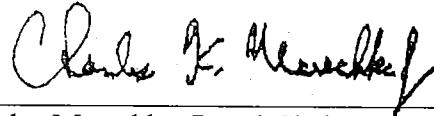
Commissioner Galia Steinbach, Commissioner Terri Torain, and Commissioner Charles Marschke Panel Chairperson, unanimously concurred in the foregoing decision.

To comply with this Order, Respondents, Robert Lewis and Tracy Lewis, 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 Pier Riviera and Elena Pezzana, in the amount of \$9,646.00.

The Respondents, Robert Lewis and Tracy Lewis, 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 (\$9,646.00) if a stay of enforcement of this Decision and Order is sought.

A handwritten signature in cursive script, reading "Charles K. Marschke".

Charles Marschke, Panel Chairperson
Commission on Landlord-Tenant Affairs