

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

In the matter of:

Flavio Carballo and
Elizabeth Acosta

Complainants

V.

Mario Pefaure and
Celina Pefaure

Respondents

*
*
*
*
*
*
*
*
*
*
*

Case No. 35142

Rental Facility: 12802 Hathaway Drive, Silver Spring, Maryland (License # 32377)

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, 2004, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 10th day of December 2015, found, determined, and ordered, as follows:

BACKGROUND

On May 4, 2015, Flavio Carballo and Elizabeth Acosta ("Complainants"), former tenants at 12802 Hathaway Drive, Silver Spring, Maryland (the "Property"), filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs ("Department"), against Mario Pefaure and Celina Pefaure ("Respondents"), in which they alleged that the Respondents assessed unjust charges against their security deposit plus accrued interest after the termination of their tenancy.

The Respondents contend that the Complainants: ((1) damaged the Property in excess of ordinary wear and tear during their tenancy; (2) costs were incurred to repair those damages which justified the withholding of the security deposit plus interest; and, (3) they have an outstanding balance owed to them in the amount of \$2,594.00.

The Complainants are seeking the refund of their entire security deposit (\$1,800.00) plus interest (\$135.00), and pet deposit (\$800.00) plus interest (\$24.00), for a total amount of \$2,759.00, and a penalty of up to 3 times that amount for the unreasonable withholding.

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 27, 2015. The public hearing in the matter of Flavio Carballo and Elizabeth Acosta v. Mario Pefaure and Celina Pefaure, relative to Case No. 35142 was held on October 27, 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 Flavio Carballo and Elizabeth Acosta; and, interpreter Marco Aguilar; and Respondent Mario Pefaure, and witness Mirco Pefaure, Respondent's son. 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) Translation of Page 4 of Commission Exhibit No. 1, relative to an addendum written to the original lease, identified as Respondent's Exhibit No. 1, and (2) An undated picture of a carved door, identified as Respondent's Exhibit No. 2. The Commission also entered into the record, without objection, the following exhibits offered by the Complainant: (1) A series of 136 undated pictures allegedly taken during the time of move-out, identified as Complainant's Exhibit No. 1; and, (2) An undated picture showing a roof leak allegedly taken during the tenancy, identified as Complainant's Exhibit No. 2.

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 March 20, 2012, the Complainants and the Respondents signed a three year lease agreement ("Lease") for the rental of the Property, which commenced on April 1, 2012, and expired on March 31, 2015, for a monthly rent of \$1,800.00 (Commission Exhibit No. 1 – Pages 5 through 14).
2. The Commission finds that on or about March 20, 2012, the Complainants paid the Respondents a security deposit in the amount of \$1,800.00, which is properly receipted in the Lease (Commission Exhibit No. 1 – Pages 6).
3. The Commission finds that on December 15, 2013, an addendum to the Lease was signed by the parties which specified that the tenants would pay an additional annual non-refundable \$800.00 for the possession of two dogs at the Property, which were not on the original Lease (Commission Exhibit No. 1 – Page 4 and Respondent's Exhibit No. 1).
4. The Commission finds credible the Respondent's testimony that the \$800.00 was intended as pet rent for one year. This breaks down to \$66.67 per month for both dogs.
5. The Commission finds that by an undated letter, the Respondents provided the Complainants with a Notice to Vacate for Breach of Lease, with a stipulated vacate date of January 12, 2015 (Commission Exhibit No. 1 – Page 43 and 44).

6. The Commission finds that by a letter dated February 22, 2015, the Complainants advised the Respondents via certified mail, that they moved-out of the Property and that they were going to be available for an inspection on February 28, 2015 at 4:00 PM (Commission Exhibit No. 1 – Page 45 and 46).

7. The Commission finds credible the Respondent's testimony that he did not receive the certified mail until March 2, 2015.

8. The Commission finds that the Property was re-rented on March 27, 2015, for a term of two years, at a monthly rent of \$1,930.00 (Commission Exhibit No. 1 – Page 47).

9. The Commission finds that by a letter dated April 9, 2015, the Respondents advised the Complainants (Commission Exhibit No. 1 – Page 15 and 16), in pertinent part of the following:

“...Following is a detail of the cost I incurred, which includes rent for the month of March 2015, payment of the WSSC bill and repairs:

1. Replace doors	\$1,352.00
2. Repairs and water consumption	\$1,350.00
3. Rent for month of March	<u>\$1,800.00</u>
	4,502.00
4. Security Deposit plus interest Refund	<u>\$1,908.00</u>
Balance Due	\$2,594.00....”

10. The Commission finds that the Respondents submitted to the Department the following additional documentation (Commission Exhibit No. 1 – Pages 21 through 35):

- A) Copy of payment issued to Federico Gonzalez-Contractor relative to repair of the basement doors at the Property in the amount of \$256.00-dated 3/15/15.
- B) Copy of payment issued to Jairo Cabrera-Handyman relative to paint of the Property in the amount of \$130.00-dated 3/7/15.
- C) Copy of payment issued to Saul Soria-Contractor relative to leaves removal at the Property in the amount of \$30.00-dated 1/22/15.
- D) Copy of payment issued to Saul Soria-Contractor relative to cleaning of the gutters in the amount of \$100.00-dated 1/7/15.
- E) Copy of payment issued to Rene Portillo-Contractor relative to the replacement of two doors in the amount of \$400.00-dated 11/16/14.
- F) Copies of a series of Home Depot receipts for a total amount of \$ 1,336.58 with variable dates ranging from 11/12/14, through 3/18/15.
- G) WSSC bill relative to water consumption at the Property through February 28, 2015 in the amount of \$398.29.

11. The Commission finds that the water bill in the amount of \$398.29 was not paid by the Respondents within the 45 days after the Complainants vacated the Property (Commission Exhibit No. 1 – page 34).

12. The Commission finds that the Complainant did damage one of the doors and that this was in excess of ordinary wear and tear, which justified the Respondents' charge of \$591.80 for the replacement.

13. The Commission finds that the Complainants owe rent for the period March 1, 2015, through March 26, 2015, in the amount of \$1,500.00 because the Respondents re-rented the Property on March 27, 2015 (Commission Exhibit No. 1 – Page 47).

14. The Commission finds that the Respondents failed to credit the Complainants' security deposit with the correct amount of simple interest which had accrued on their \$1,800.00 security deposit from the commencement of their tenancy April 1, 2012, until the termination of their tenancy, March 26, 2015, in the amount of \$135.00.

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) of the Real Property Article states: "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". The Commission concludes that the Respondents did send such a list to the Complainants within 45 days after their tenancy ended; therefore, they are in compliance with Section 8-203 (g) (1) of the Real Property Article.

2. Pursuant to Section 8-203 (g) (1) of the Real Property Article, the Respondents were within their rights to withhold from the Complainants' security deposit the cost actually incurred to repair damages to the Property in excess of normal wear and tear after the termination of their tenancy and rent, which amount was \$2,091.80, as follows:

- A) \$591.80 for one door replacement (from an initial \$1,352.00 charge); and,
- B) \$1,500.00 for March 2015, rent (March 1, 2015, through March 26, 2015, from an initial \$1,800.00).

3. The Commission concludes that the addendum to the Lease signed by the parties on December 15, 2013 (Commission Exhibit No. 1-Page 4) is for pet rent and was executed to accommodate the Complainants' pets, which were not present and agreed to, at the commencement of the tenancy.

4. The Commission concludes that the Complainants failed to vacate in accordance to the Respondents' Notice to Vacate and, consequently, they held over and are, therefore, liable for payment of rent until the Property was re-rented and/or occupied – March 27, 2015.

5. The Commission concludes that the Respondents' failure to credit or pay the Complainants the right amount of interest (\$135.00) 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.

6. The Commission concludes that the Complainants did owe the Respondents the amount of \$2,091.80 for damages to the Property in excess of normal wear and tear and rent, which exceeded the Complainants' security deposit plus accrued interest (\$1,935.00). Therefore, the Complainants caused a defective tenancy and the Respondents are entitled to retain the entire security deposit plus interest.

ORDER

In view of the foregoing, the Commission concludes that the Respondents properly assessed \$2,091.80 against the Complainants' security deposit plus accrued interest, and that the Respondents were within their rights to retain the Complainants' entire security deposit plus accrued interest in the total amount of \$1,935.00 to apply against that total. Therefore, Case No. 35142, Flavio Carballo and Elizabeth Acosta v. Mario Pefauré and Celina Pefauré is hereby DISMISSED.

Commissioner Mora Rogers, Commissioner Aluanda Drain*, and Commissioner Laura Murray, Panel Chairperson, unanimously concurred in the foregoing decision.

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.



Laura Murray, Panel Chairperson
Commission on Landlord-Tenant Affairs

*Commissioner Aluanda Drain, who was absent during the hearing, voted after providing written certification of having read the hearing transcript and reviewed the evidence of record in accordance with County Code Section 2A-10 (c).