

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

In the matter of:

Patricia Vidal

Complainant

V.

Monica Eliou

Respondent

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Case No. 35182

Rental Facility: 10120 Little Pond Place, Apt. 5, Gaithersburg, Maryland (License # 79012)

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 18th day of December 2015, found, determined, and ordered, as follows:

BACKGROUND

On May 21, 2015, Patricia Vidal ("Complainant"), filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs ("Department"), against Monica Eliou ("Respondent"), in which she alleged that the Respondent assessed unjust charges against her security deposit plus accrued interest after the termination of her tenancy.

The Respondent contends that the Complainant: (1) damaged the apartment in excess of ordinary wear and tear during her tenancy; (2) turned in a heavily roach infested apartment when she moved out; and (3) caused the Respondent to incur costs to disinfect the unit; all of which justified the withholding of the Complainant's security deposit plus interest.

The Complainant is seeking an order from the Commission requiring the Respondent to refund her security deposit (\$1,500.00) plus accrued interest (\$45.00), for a total amount of \$1,545.00, and imposing a penalty of up to three times that amount based on the Respondent's alleged unreasonable withholding of her 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 November 10, 2015. The public hearing in the matter of Patricia Vidal v. Monica Eliou, relative to Case No. 35182 was held on November 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 Patricia Vidal, the Respondent Monica Eliou; and witness George Eliou, Respondent's husband. 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) Letter dated October 5, 2015, from Eric Walo Adonteg, former tenant of the Respondent, identified as Respondent's Exhibit No. 1, (2) Letter dated October 25, 2015, from Marty Welsh, Realtor with The Bob Lucido Team, LLC, stating the condition of the apartment at the time the Complainant moved-in, identified as Respondent's Exhibit No. 2; (3) A series of 15 pictures dated March 29, 2015, showing the condition of the apartment after the Complainant moved out, identified as Respondent's Exhibit No. 3; (4) A series of 11 pictures dated February 28, 2015, showing the condition of the apartment during the Complainant's tenancy; identified as Respondent's Exhibit No. 4; (5) An invoice from Heron's Cove Condominium, dated March 30, 2015, in the amount of \$90.00 for work performed at the apartment—replacement of new lock set, identified as Respondent's Exhibit No. 5; and (6) An invoice from Heron's Cove Condominium, dated April 20, 2015, in the amount of \$25.00 for work performed at the apartment—unjammed garbage disposal—identified as Respondent's Exhibit No. 6. The Commission also entered into the record, without objection, the following exhibits offered by the Complainant: (1) A series of 27 undated pictures allegedly taken during her tenancy showing a heavy roach infestation in the apartment, identified as Complainant's Exhibit No. 1; and (2) A chain of text messages in Spanish between the Complainant and the Respondent relative to repairs needed in the apartment, including reports of roach infestation for the time period December 2014 through February 2015, identified as Complainant's Exhibit No. 2.

The Commission decided to keep the record open for seven calendar days, until November 17, 2015, so the Respondents could submit the following: (1) A statement from Heron's Cove Condominium that they did not receive any complaints about roaches in building 10120, except for the Complainant's unit; and (2) A report from Brody Pest Control to attest to the fact that Unit No. 5 in Building No. 10120 was the only one affected by the roach infestations and that they did not treat the rest of the units in building 10120.

On November 13, 2015, the Department received from the Respondent, via e-mail, a statement from Michelle Jolles, General Manager, Heron's Cove Condominium regarding treatments for roach infestation performed at Unit No. 5, which was marked as Respondent's Exhibit No. 7. On November 17, 2015, also via e-mail, the Department received from the Respondent a statement from Amanda Crumbling, Office Manager, Brody Pest Control regarding treatments of units in general once Heron's Cove Condominium request them to do so,

which was marked as Respondent's Exhibit No. 8. These exhibits were forwarded to all the parties. The record was closed on November 17, 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 March 27, 2014 the Complainant, Teny Abrahamian (cosigner), and Marty Welsh, in her capacity as an agent for the Respondent, signed a one year lease agreement ("Lease") for the rental of Unit No. 5 at Heron's Grove Condominium ("Unit"), which commenced on April 1, 2014, and expired on March 31, 2015, for a monthly rent of \$1,300.00 (Commission Exhibit No. 1 – Pages 6 through 24).
2. The Commission finds that on or about March 27, 2014, the Complainant paid the Respondent a security deposit in the amount of \$1,500.00, which is properly receipted in the Lease (Commission Exhibit No. 1 – Pages 7 and 24).
3. The Commission finds credible the Complainant's testimony that the only person pursuing this complaint is the Complainant, since the second lease holder, Teny Abrahamian, signed with her to help her obtain the Lease due to the Complainant's lack of rental history.
4. The Commission finds credible the Complainant's testimony that shortly after she moved-in she noticed a significant roach infestation in the Unit and that she reported it to the Respondent.
5. The Commission finds credible the Respondent's testimony that even though she did not go in person to the Unit to observe and assess the alleged infestation, she requested that the Heron's Cove Condominium Association fumigate the unit.
6. The Commission finds credible the Complainant's testimony that despite the treatments allegedly performed by contractor Brody Pest Control to exterminate the roaches on four different occasions, the infestation persisted.
7. The Commission finds that by a letter dated December 26, 2014, the Complainant advised the Respondent that she was not renewing the lease and would be moving at the end of the lease term, March 31, 2015 (Commission Exhibit No. 1 – Page 25).
8. The Commission finds that the reason for non-renewal that the Complainant stipulated in the notice to vacate was that the Unit was not habitable due to the roach infestation (Commission Exhibit No. 1 – Page 25).
9. The Commission finds credible the Complainant's testimony that on March 22, 2015, she and the Respondent performed a final walkthrough inspection of the Unit; at which time, the keys for the Unit were returned to the Respondent.
10. The Commission finds that on March 22, 2015, the Complainant vacated the Unit having paid rent in full through March 31, 2015 (Commission Exhibit No. 1 – Page 52).

11. The Commission finds that by a letter dated May 9, 2015, the Respondent advised the Complainant in pertinent part of the following (Commission Exhibit 1 – Page 2):

“...This letter is to notify you that you have violated the lease agreement executed on March 30, 2014. Note the following violations:

- 1) Section 7 – greater than 3 occupants
- 2) Section 10 – Maintenance. There are several violations (See page 4 of lease)
 - (a) Damage to the middle blind in the living room where the blind is coming down from the ceiling
 - (b) Failure to control roaches (my responsibility ended after 30 days)
 - (c) Screen ripped in the dining room
 - (d) Garbage disposal – Legos found in the disposal
 - (e) 80% of the floor was not covered upon two inspections prior to move out
 - (f) Damage to the front door above and beyond normal wear and tear
- 3) Section 26 – Property not returned in good general order

I have incurred expenses greater than the \$1,500.00 security deposit in order to inhabit the property. These expenses include:

Additional pest control services	\$200.00	Elrich Pest Control
Deep clean sterilization of the Property	\$1,900.00	Heavy Duty Professional Cleaning
Replacement of screen	\$50.00 (receipt forthcoming)	Heron's Cove
Repair to garbage disposal	\$25.00 (receipt forthcoming)	Heron's Cove
Repair to front door	\$50.00 (receipt forthcoming)	Heron's Cove
TOTAL	\$2,225.00	

Per the lease executed on March 30, 2014, you have forfeited the security deposit in the amount of \$1,500.00...”

12. The Commission finds that the Respondent contacted Heron's Cove Condominium (Respondent's Exhibit No. 7) to have the unit exterminated on the following dates:

- *March 27, 2014
- *May 22, 2014
- *June 19, 2014
- *August 21, 2014
- *November 6, 2014
- *January 8, 2015
- *March 26, 2015

13. The Commission finds that the additional correspondence submitted by the Respondent (Respondent's Exhibit No. 7 and Respondent's Exhibit No. 8) does not contain probative evidence that the building located at 10120 Little Pond Place was free of any rodent, insects or other vermin infestation, except for the unit that the Complainant occupied.

14. The Commission finds that because the Respondent did not provide any probative evidence that the infestation of roaches in the Unit was confined solely to that unit, the Complainant cannot be held liable for such extermination.

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. Montgomery County Code Section 26-9 (*Maintenance of dwelling units*) states in pertinent part the following:

(a) (9) ...Each occupant of a dwelling unit or individual living unit in a dwelling containing more than one unit must exterminate if that unit *is the only infested unit* [emphasis added]. The owner must exterminate if the infestation:

(A) Includes more than one unit or the shared or common areas of a dwelling,
or

(B) Was caused by the owner's failure to maintain the dwelling in a rat-proof or reasonably insect-proof condition.

Based on the evidence and testimony submitted by both parties, the Commission concludes that the Respondent's failure to maintain the dwelling in a good and sanitary condition is a violation of Section 26-9 (a) (9).

2. 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". The Commission concludes that the Respondent did send such a list to the Complainant within 45 days after the tenancy ended. Therefore, she is in compliance with Section 8-203 (g) (1) of the Real Property Article. However, the charges assessed against the Complainant's security deposit are not justified because they are either not the Complainant's responsibility or they are not for actual cost incurred by the Respondent.

3. The Commission concludes that the Respondent's failure to credit or pay the Complainant the right amount of interest (\$45.00) 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 failure by the Respondent to refund the Complainant's 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 Respondent's conduct in wrongfully withholding the Complainant's security deposit and whether or not the Respondent acted in bad faith or have a prior history of wrongful withholding of a security deposit. While there is no history of the Respondent appearing before the Commission, her admitted testimony that she did not assess the roach infestation personally and in a timely manner and having the Complainant and her family live in such an infested unit for a whole year, rises to the level of bad faith and egregiousness necessary to award a penalty. Therefore, an additional award of \$1,545.00 as a penalty is granted.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondent must pay the Complainant **\$3,090.00** which sum represents the Complainant's security deposit (\$1,500.00), plus accrued interest (\$45.00), and a penalty of \$1,545.00.

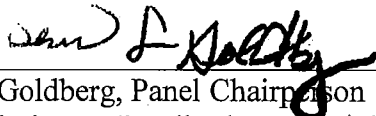
Commissioner Robyn Jones, Commissioner Terri Torain, and Commissioner David Goldberg Panel Chairperson, unanimously concurred in the foregoing decision.

To comply with this Order, Respondent, Monica Eliou, 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 Patricia Vidal, in the amount of \$3,090.00.

The Respondent, Monica Eliou, 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. 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 (\$3,090.00) if a stay of enforcement of this Decision and Order is sought.


David Goldberg, Panel Chairperson
Commission on Landlord-Tenant Affairs