

Before the
Commission on Landlord-Tenant Affairs
for Montgomery County, Maryland

In the Matter of Alexis Sidwell and Jill Luksic Complainants	
v.	Case No. 6305
Chander and Ashima Kant Rental Facility: 4002 Norbeck Square Drive, Rockville, Maryland - License #014869 Respondents	

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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 29-14A, 29-38, and 29-40 of the Montgomery County Code 1994, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 16th day of November, 1998, found, determined, and ordered, as follows:

BACKGROUND

On December 17, 1997, Alexis Sidwell and Jill Luksic (the "Complainants"), former tenants at 4002 Norbeck Square Drive, Rockville, Maryland, (the "Property"), a licensed single-family rental facility in Montgomery County, MD, owned by Chander and Ashima Kant, (the "Respondents"), filed a formal complaint with the Department of Housing and Community Affairs (the "Department"), in which they alleged that the Respondents assessed unjust damages against their security deposit, in the amount of \$427.00, after the termination of their tenancy, in violation of Section 8-203, "Security Deposits," of the Real Property Article, Annotated Code of Maryland, 1996 ("State Code"), and paragraph 3, "Security Deposit," of the lease agreement.

Specifically, the Complainants asserted in their complaint that: (1) when they vacated the Property on October 31, 1997, the carpet in the Property was not damaged beyond normal wear and tear and, the holes in the walls were caused by picture hooks and hangers which is normal

wear and tear; (2) the Respondents' assessment of court costs, in the amount of \$24.00, is disallowed by Section 29-26(o) of the Montgomery County Code, 1994, as amended ("County Code"); and (3) an inspection of the Property on October 31, 1997, by staff from the Department revealed that the Property was not damaged beyond normal wear and tear as a result of their tenancy.

After determining that the matter was not susceptible to conciliation, the Department duly referred the above-named case to the Commission on Landlord-Tenant Affairs for review. On January 6, 1998, the Commission determined to hold a public hearing which was originally scheduled to be heard on February 24, 1998. However, based on a timely request by the Respondents, a postponement was granted, and the hearing was re-scheduled for May 12, 1998.

The hearing commenced on May 12, 1998, and concluded on that date. Present at the hearing and offering testimony and evidence were the Complainants, Alexis Sidwell and Jill Luksic, and two Commission witnesses, Inspector John Whitt, from the Department's Division of Housing and Code Enforcement, and Michael Denney, Investigator, Office of Landlord- Tenant Affairs. The Respondents failed to appear at the hearing although both were properly notified, and no one appeared on their behalf.

The Complainants are seeking an order from the Commission directing the Respondents to refund the withheld portion of their security deposit (\$427.00). On the record at the hearing, the Complainants asserted that the Respondents' withholding of a portion of their security deposit was unreasonable, and they requested the Commission also award them a three-fold penalty of the withheld amount (\$1,281.00) for a total award of \$1,708.00.

As a preliminary matter, the Commission considered Respondents' Motion for Continuance, filed by their attorney, Craig B Zaller, on May 12, 1998, the date of this hearing. Based on the fact that Respondents' Motion is their second request for Continuance of this matter and, the fact that it was not filed timely,¹ the Motion is hereby DENIED.

Furthermore, the Commission extended the time period within which it would decide this matter pursuant to Section 7.1 of Appendix L, "Regulations on Commission on Landlord-Tenant Affairs" of the County Code. Without objection from the parties present at the hearing, the Commission entered into the record of the hearing the case file for the Property compiled by the Department, identified as Commission's Exhibit No. 1.

FINDINGS OF FACT

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

1. The Respondents, Chander and Ashima Kant, are the owners of the Property, a licensed single-family Rental Facility in Montgomery County, MD.
2. The Respondents received proper notice of the hearing and were properly summoned to appear.
3. The Respondents failed to appear at the hearing or designate someone to appear on their behalf.

4. On October 24, 1996, the Complainants and Respondents' agent at that time, Janet Patel, signed and entered into a one-year lease agreement for rental of the Property, which commenced on November 1, 1996, and expired as of October 31, 1997.

5. On or about October 24, 1996, the Complainants paid the Respondents a security deposit in the amount of \$950.00. The receipt for the security deposit is contained at paragraph 3, "Security Deposit," of the lease agreement.

6. On September 30, 1997, the Complainants issued to the Respondents a proper written notice of their intention to quit and vacate the Property at the end of the lease term, on October 31, 1997. The Complainants' notice complies with Paragraph 22a, "Termination-Hold Over," of the lease.

7. The Complainants vacated the Property as of October 31, 1997, having paid rent in full through that date.

8. On October 31, 1997, Inspector John Whitt, Division of Housing and Code Enforcement, in the company of the Complainants, and the Respondents' agent, Art Hinton, Allied Realty Corporation, conducted a final walk-through inspection of the Property (See pages 10-13 of Commission's Exhibit No. 1) to determine if any damage beyond normal wear and tear had occurred as a result of the Complainants' tenancy.

9. The Commission credits the testimony of Inspector Whitt that based on his October 31st inspection of the Property, no damage beyond normal wear and tear was caused to the Property by the Complainants, and it was left in a "satisfactory" condition. The inspection report was signed by Complainant Alexis Sidwell and Respondents' agent Mr. Hinton.

10. By a letter dated November 26, 1997 (At page 15 of Commission's Exhibit No. 1), within 30 days after the termination of their tenancy, the Respondents advised the Complainants that they were withholding \$427.00 from their security deposit for the following damages:

Court Costs, L&T Action, 12/96 \$ 12.00

Court Costs, L&T Action, 3/97 12.00

Carpet Cleaning 159.00

Wall Repairs 244.00

Total \$427.00

11. By the same November 26th letter, the Respondents' refunded to the Complainants \$561.00 of their \$950.00 security deposit. The Respondents also credited the Complainants security deposit with interest in the amount of \$38.00.

12. The Commission's notes that Respondents' November 26th letter also contains the following statement: "We also believe you [Complainants] maliciously harassed us because of our race/national origin that is Asian-American versus your European-American-race/national origin. Therefore, we intend to file suitable action against you in the future. The Respondents did not file a cross-complaint against the Complainants with the Commission.

13. No evidence was produced at the hearing that Respondents' second security deposit refund check, in the amount of \$66.55, was ever cashed by the Complainants.

14. The Commission credits the testimony of the Complainants that at the time they moved into the Property, on or about October 24, 1996, the kitchen was dirty, there was evidence of rodent (mice) infestation and the basement smelled of pet urine.

15. The Complainants did not have a pet at any time during their tenancy.

16. The Commission finds no evidence in the record that the District Court of Maryland awarded any court costs to the Respondents based on the Complainants late payment of rent.

17. By a letter dated December 18, 1998 (See pages 24-25 of Commission's Exhibit No. 1), received by the Respondents', the Department informed them that: (a) "...the Property was not damaged beyond normal wear and tear as a result of the Complainants' tenancy and therefore, the withholding of \$159.00 for carpet cleaning and \$244.00 for repair and painting of interior walls is disallowed." and (b) "The assessment of \$24.00 for court costs is contrary to Section 29-26(o) of the County Code...Therefore, the assessment of \$24.00 in court costs is disallowed."

18. By a letter dated December 22, 1997 (At pages 26-27 of Commission's Exhibit No. 1), five days after the Complainants filed their complaint with the Commission and four days after they were put on notice by the Department that the damages claimed were disallowed, the Respondents refunded to the Complainants an additional \$66.55 of their security deposit. However, the endorsement section of the Respondents' check (At page 28 of Commission's Exhibit No. 1), states:

"Cashing of this check by Jill Luksic & Alexis Sidwell means their agreement that they have no claim against Chander & Ashima Kant. However, Chander & Ashima Kant can still assert any or all claims against Jill Luksic & Alexis Sidwell."

Respondents' December 22nd letter also states, "Further, we believe you have maliciously harassed us because [of] our race/national origin that is Asian-American versus your European-American-race/national origin. We will be filing suitable action against you shortly."

19. The Property was not damaged beyond normal wear and tear as a result of the Complainants' tenancy.

CONCLUSIONS OF LAW

Based upon a fair consideration of the testimony and evidence contained in the record, the Commission draws the following conclusions of law:

1. The Respondents credited the Complainants with security deposit interest in the amount of \$38.00, which is the correct amount, in accordance with Section 8-203(f)(1) of the State Code.

2. The Respondents withholding of \$24.00 from the Complainants security deposit for court costs is contrary to Section 29-26 (o) of the County Code, and is hereby disallowed. The Respondents were put on notice by the Department (See Findings of Fact at No. 16 above) and failed to remove this charge or refund this amount to the Complainants.

3. The Respondents improperly withhold from the Complainants' security deposit the costs of carpet cleaning (\$159.00) and wall repairs (\$244.00) which were not damaged beyond normal wear and tear, in violation of Section 8-203(g)(1) and (g)(2) of the State Code.

4. The Respondents' agent, Art Hinton, acting on their behalf, was present at the final walkthrough inspection of the Property conducted by Inspector Whitt on October 31, 1997, and

he signed the inspection report which clearly determined that the carpet and the walls were left in a "satisfactory" condition. Contrary to the findings of the inspection, the Respondents still withheld \$403.00 from the Complainants' security deposit for damage.

5. The Commission concludes that Respondents' withholding of \$24.00 for court costs and \$403.00 for repairs from the Complainants' security deposit was unreasonable, in violation of Section 8-203(f)(4) of the State Code.

6. The Commission also concludes that Respondents' November 26 and December 22, 1998, letters to the Complainants contain unfounded and unwarranted threats of future legal action against the Complainants in an effort to dissuade them from pursuing their complaint with the Commission, and the language contained in the endorsement section of Respondents' second security deposit refund check (See Findings of Fact No. 17 above) constitutes an attempt by the Respondents to coerce the Complainants into forfeiting their rights to pursue a claim against the Respondents with the Commission. These actions were retaliatory and constitute a violation of Section 29-30B(b) of the County Code and caused a defective tenancy.²

7. Respondents' failure to handle and dispose of the Complainants' security deposit in accordance with Section 8-203 of the State Code also caused a defective tenancy.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders:

1. The Respondents must pay the Complainants **\$1,708.00**, which sum represents a refund of the improperly withheld portion of their security deposit (\$427.00) and a three-fold penalty (\$1,281.00) for unreasonably withholding that amount from their security deposit; and,
2. Complainants must return Respondents' December 22, 1998 check, in the amount of \$66.55, or, if Complainants have cashed the referenced check, Complainants must reimburse Respondents in that amount.

The foregoing decision was concurred in unanimously by Panel Chairperson Jonathan Smith and Commissioners Gary Guy and Roger Luchs.

Should the Commission determine that the parties have not, within fifteen (15) calendar days of receipt of this Decision and Order, made a bona fide effort to comply with the terms of this Decision and Order, it may refer the matter to the County Attorney for enforcement.

The parties are hereby notified that Section 29-44 of the County Code declares that failure to comply with this Decision and Order shall be punishable by a civil fine Class A violation as set forth in Section 1-19 of the County Code.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to the Maryland Rules governing administrative appeals.

Jonathan Smith, Panel Chairperson
Commission on Landlord -Tenant Affairs