

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

<p>In the Matter of Darren Malry & Shawn Malry Complainants</p>	
v.	<i>Case No. H-1394</i>
<p>Maijid Danesh Rental Facility: 3543 Bruton Parish Way, Silver Spring, MD Respondent</p>	

- [Decision and Order](#)
- [Findings of Fact](#)
- [Conclusions of Law](#)
- [Order](#)

-

DECISION AND ORDER

The above-captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland, 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 17th day of June, 1996, found, determined and ordered, as follows

On August 30, 1995, Darren and Shawn Malry former tenants at 3543 Bruton Parish Way, Silver Spring, Maryland, (hereinafter the "Complainants"), filed a formal complaint with the Office of Landlord-Tenant Affairs. The Complainants alleged that Maijid Danesh, owner of 3543 Bruton Parish Way, Silver Spring, Maryland, (hereinafter the "Respondent"), assessed unjust damages against their security deposit after the termination of their tenancy, in violation of Section 8-203 (g)(1) of the Real Property Article, Annotated Code of Maryland, 1988, as amended.

After determining that the matter was not susceptible to conciliation, the Director of the Office of Landlord-Tenant Affairs duly referred the above-named case to the Commission on Landlord-Tenant Affairs for its review. On March 5, 1996, the Commission determined to hold a public hearing. The Hearing was held on May 7, 1996, and concluded on that date.

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

FINDINGS OF FACT

1. On September 14, 1994, the Complainants and the Respondent executed a ten month lease agreement ("Lease") for the rental of 3543 Bruton Parish Way, Silver Spring, Maryland ("Dwelling Unit"). This Lease commenced on October 1, 1994, and expired on July 31, 1995.
2. On September 14, 1994, Complainants paid the Respondent a security deposit in the amount of \$895.00.
3. On July 1, 1995, the Complainants issued the Respondent a written notice confirming their intention to vacate the dwelling unit by July 31, 1995. The Respondent accepted this notice.
4. On July 31, 1995, the Complainants vacated the dwelling unit.
5. The Respondent testified since the Complainants had not fully moved out, he did not conduct a full and final walk-through inspection of the dwelling unit at the time the Complainants vacated on July 31, 1995. The Respondent testified he only conducted a walkthrough of the first floor of the dwelling unit where he pointed out damage to the floor which was buckled, discolored and uneven.
6. The Complainants testified they had cleaned the dwelling unit thoroughly before they moved out. Based on instructions of the Respondent they painted the dwelling unit with paint that had been offered by the Respondent which was in the basement of the dwelling unit. The Complainants also testified they restored the floor to an acceptable condition after the Respondent complained.
7. The Respondent testified since the Complainants had used the wrong color paint he had the dwelling unit repainted and there were several dents and nicks in the walls caused by the Complainants that had to be repaired. He also testified the floor was still damaged.
8. The Respondent presented an August 4, 1995 invoice for painting, floor, deck and bathroom work. He stated the invoice was written in two colors of ink because he had contacted the contractor and requested he indicate what damages he repaired at a later date. He testified he paid cash to the contractor and submitted a computer generated printout for his tax records to indicate he had paid the contractor for the repair work to the dwelling unit.
9. The Respondent testified the rail to the deck was loose and the chain in the commode in the downstairs bathroom was not connected properly.
10. The Respondent presented evidence that the Complainants failed to pay \$41.53 for a water bill which the Respondent incurred at the termination of the Complainants' tenancy. The Respondent testified that the new tenants had paid the Complainants' outstanding water bill. The Respondent also testified that he gave the new tenant a rent credit in the amount of \$41.53 for this water bill.
11. On August 20, 1995, the Respondent sent Complainants, by first class mail, an itemized list of damages.
12. The August 20, 1995 correspondence advised the Complainants their security deposit (\$895.00) was being withheld for damage to the floors of the dwelling unit (\$800.00); for repainting and repairs to the walls of the dwelling unit (\$800.00); unpaid water bill (\$41.53); and for damages in the amount of (\$150.00) for the post and rail to the deck and (\$50.00) for a repair to the bathroom commode.

13. The Respondent did not pay the Complainants interest accrued on their security deposit.

14. The Commission found that there was insufficient evidence that the walls, deck and bathroom were damaged beyond normal wear and tear. The Commission finds credible the floors were restored by the Complainants.

Accordingly, based upon a fair consideration of the testimony and evidence contained in the record, the Commission on Landlord-Tenant Affairs concludes:

CONCLUSIONS OF LAW

1. The Complainants paid the Respondents a security deposit in the amount of \$895.00.

2. The Complainants issued the Respondent a proper written notice to quit and vacate the dwelling unit and vacated the dwelling unit on July 31,1995.

3. The Respondent issued the Complainants an itemized list of damages, sent by first class mail, within thirty (30) days after the termination of their tenancy, pursuant to Section 8-203 (h)(1) of the Real Property Article, Annotated Code of Maryland, 1988, as amended.

4. Respondent failed to credit the Complainants for the interest accrued on their security deposit in the correct amount of \$17.90, in violation of Section 8-203 (f)(1) of the Real Property Article, Annotated Code of Maryland, 1988, as amended.

5. The Respondent failed to prove that the Complainants damaged the dwelling unit beyond normal wear and tear during their tenancy and lacked credible proof that he paid for the repairs. Based on the testimony of Respondent and testimony provided by the Complainants, the Commission finds credible the Complainants' claim that the damages to the floor were in excess of ordinary wear and tear, but on July 31,1995, had been properly restored to an acceptable condition, based on the Respondent's instructions to them. Therefore, Respondent's claim for such damages is disallowed pursuant to Section 8-203(g)(1), Real Property Article, Annotated Code of Maryland, 1988, as amended.

6. The Respondent failed to provide evidence that they were damaged or that they incurred any actual expense that would justify the withholding of \$800.00 from their security deposit for the repainting and repairing of the walls in the dwelling unit. Therefore, Respondent's claim for such damages is disallowed, pursuant to Section 8-203(g)(1) of the Real Property Article, Annotated Code of Maryland, 1988, as amended.

7. Respondent proved by evidence at the hearing that he incurred a water bill in the amount of \$41.53 as a direct result of the Complainants' tenancy therefore, he properly withheld this amount from the security deposit pursuant to Section 8-203(g)(1) Real Property Article, Annotated Code of Maryland, 1988 as amended.

8. The Respondent provided insufficient proof that the deck railing and bathroom repairs were beyond normal wear and tear. Therefore, pursuant to Section 8-203(g)(1) the amount requested to be withheld (\$150.00 and \$50.00) is disallowed.

9. Respondent caused a defective tenancy by the improper handling and disposition of the Complainants' security deposit.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders Respondents to pay Complainants the sum of **\$873.37**, which sum represents Complainants' security deposit (\$895.00), plus accrued interest (\$17.90), less damages rightfully withheld (\$41.53 water bill).

The foregoing was concurred in unanimously by Commissioners Raftery, Papalazarus and Himmelhoch.

Should the Commission determine that the Respondents 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 Montgomery County Code 1994, as amended, 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 Montgomery County Code 1994, as amended.

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.

Joan Himmelhoch, Panel Chairperson Commission on Landlord-Tenant Affairs