

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

In the Matter of Gary Brown, Andrew Clements, Christopher Nyberg and Matthew Sobocinski Complainants	
v.	Case No. H-1466
William P. Perry Rental Facility: 4524 Fairfield Drive, Bethesda, MD Respondent	

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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 ("the Code"), and the Commission having considered the testimony and evidence of record, it is, therefore, this 24th day of July, 1997, found, determined and ordered, as follows:

BACKGROUND

On December 22, 1995, Gary Brown, Andrew Clements, Christopher Nyberg, and Matthew Sobocinski ("the Complainants"), former residents of 4524 Fairfield Drive, Bethesda, MD ("the Property"), filed a formal complaint with the Division of Consumer Affairs, in which they alleged that William P. Perry ("the Respondent"), owner of the Property: (1) misrepresented the fact that the basement of the Property was a habitable space; (2) breached the lease agreement by failing to maintain the basement in a reasonably waterproof condition and failed to make timely

and adequate repairs to the gas furnace, in violation of Chapter 26, "Housing and Building Maintenance Standards," Montgomery County Code, 1994, as amended ("County Code"); and, (3) assessed unjust damages against their security deposit after the termination of their tenancy, in violation of Section 8-203(f)(g) and (h) of the Real Property Article, Annotated Code of Maryland, 1996, as amended ("State Code").

Specifically, the Complainants alleged that: (1) the Respondent misrepresented the number of bedrooms in the Property, and that although the basement was represented as a bedroom, it was later determined by the Montgomery County Department of Housing and Community Affairs, Division of Code Enforcement ("Code Enforcement") that the basement was not a habitable portion of the Property and could not be used as a sleeping room; (2) technicians from the Washington Gas Company determined that the gas furnace at the Property was defective and turned it off for a substantial period of time; and, (3) the Respondent failed to correct a water leak in the basement which caused damage to the tile floor and mildew to form in the basement.

The Complainants were seeking the following relief: (1) immediate termination of their lease with the Respondent; (2) refund of the security deposit plus accrued interest; and, (3) an abatement or refund of rent paid based on a reduced number of usable bedrooms, and the failure of the Respondent to make needed and necessary repairs to the furnace in a timely and workmanlike manner, or to correct the basement water leak which reduced the value of their leasehold.

In response to the above-referenced allegations, the Respondent contended that: (1) the basement was not advertised or represented to the Complainants as being a habitable area of the Property; (2) the flooding of the basement in 1995 was caused by Complainants' failure to keep gutters and basement stairwell drain clear of leaves and other debris in violation of the lease agreement; (3) he was on vacation in Hawaii when notice of violation was issued regarding the defective furnace and he repaired it when he returned; and, (4) the Property was damaged beyond normal wear and tear by Complainants as a result of their tenancy, and the cost of repairs exceeded the amount of their security deposit plus accrued interest. Specifically, Respondent asserted that Complainants caused damage to handrails, the bathroom shower diverter and refrigerator, and also failed to clean debris from gutters and stairwell drains, rake the yard and clean out under the deck, and did not clean up all rooms upon vacating.

After determining that the complaint was not susceptible to conciliation, the Chief of the Division of Consumer Affairs duly referred the above named case to the Commission on Landlord-Tenant Affairs ("the Commission") for its review. On July 2, 1996, the Commission accepted jurisdiction of this matter and determined to hold a Public Hearing, which began on March 11, 1997, and concluded on that date. 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 Chapter 29 of the Code, and hereby decides as follows:

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FINDINGS OF FACT

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

1. The Property was properly licensed as a rental facility in Montgomery County, Maryland during Complainants' tenancy (License #014259).

2. On January 18, 1995, John D. DiTomasso, Christopher D. Nyberg*, and Matthew D. Sobocinski* executed a one (1) year lease agreement with Respondent. The lease term was to commence on February 1, 1995, and was to expire on February 29, 1996, and Messrs. DiTomasso, Nyberg and Sobocinski paid Respondent a security deposit in the amount of \$1,300.00. However, with the consent of all parties, John D. DiTomasso was replaced by Gary Brown and Andrew Clements before the lease term began so, and a new lease agreement was executed on February 1, 1995. Therefore, John D. DiTomasso is not a party to these proceedings, and the lease executed by the parties on January 18, 1995, is not subject to the jurisdiction of the Commission.

3. The new lease executed on February 1, 1995, between Complainants Gary Brown, Andrew Clements, Christopher Nyberg and Matthew Sobocinski and the Respondent, was a one year lease agreement ("the Lease") with Respondent for the rental of the Property which commenced on February 1, 1995, and expired on January 31, 1996. The monthly rental rate was \$1,300.00.

4. On or about February 1, 1995, the Complainants paid the Respondent a security deposit in the amount of \$1,300.00, and a receipt for the security deposit is contained in the Lease (See page 3 of Commission's Exhibit #1). However, the security deposit and receipt is legally insufficient.

* two of the four Complainants in this matter

5. On May 11, 1995, May 19, 1995, and June 8, 1995, the Complainants notified the Respondent in writing that rain water was leaking into the basement of the Property causing floor tiles to come apart and paint to come off of the walls. The June 8th letter also notified Respondent that the exterior drain at the entrance to the basement was clogged with debris that had been present since the commencement of their tenancy, and that the Washington Gas Company had advised them that the gas furnace in the Property was defective. Complainants requested that Respondent correct the problems within thirty (30) days. The Commission finds credible the testimony presented at the Hearing by Complainant Gary Brown that the Respondent failed to make the requested repairs which he asserted were present since the commencement of Complainants' tenancy.

In support of his assertion, Mr. Brown entered into evidence a copy of a notice of violation issued to the Respondent by Inspector John Whitt, Code Enforcement, dated March 17, 1994 (See Complainants' Exhibit #1), which included, among other violations cited, notice to "Investigate and correct the cause of the water leaking into the dwelling along the foundation wall. Eliminate all cracks and holes and other defects in order to provide a waterproof wall. Maintain the cellar reasonably free of dampness to prevent conditions conducive to decay and deterioration of the dwelling. Montgomery County Code 1984, Section 26-8(a & f)."

6. At page 13 of Commission's Exhibit #1 there is a copy of a "Notice of Potentially Hazardous Condition" issued on December 27, 1991, by Washington Gas Service Company Technician Jay Baker, which describes the furnace problem at the Property as follows: "New wall (in basement in front of water heater and furnace) does not comply with building or gas codes allowing clearance for appliances."

7. At page 14 of Commission's Exhibit #1 there is a copy of a letter from L. D. Worley, Consumer Relations, Washington Gas Service Company, to former tenant John DiTomasso (See #2 above) which states that, "On March 16, while at your residence to turn on the gas, we found that the flue pipe for the furnace needed to be moved about six inches so it is away from a

flammable material. Our representative left the furnace off and also left a warning sticker that the repairs must be made before the Furnace can be used."

8. Code Enforcement Inspector Kelso David Wallace testified at the District Court hearing which resulted from the Notice of Violation issued by Inspector Whitt, that on November 8, 1995, Washington Gas Service Company Technician, Anthony Ero, attached a "Notice of Hazardous Condition" tag to the furnace at the property which stated, "Flue pipe too close to the wall." Inspector Wallace also testified that on that date he inspected the Property and issued Respondent a notice of violation, Survey Number HC-95-3964, (see pages 11 and 12 of Commission's Exhibit #1) which included an order to repair the furnace by November 10, 1995. Inspector Wallace testified that a reinspection of the Property on November 25, 1995, revealed that the furnace had not been repaired and, based on the Respondent's failure to repair the furnace, on that date he issued the Respondent a Class A Civil Citation (#4Z33028601) for failing to repair the furnace by November 10, 1995 (See page 77 of Commission's Exhibit #1).

9. Complainant Gary Brown testified at the hearing that the furnace at the Property was defective and was not functioning properly during the tenancy. However, the Complainants failed to provide any probative evidence to support their allegation that the Property was without sufficient heat for any substantial period of time during their tenancy, that they incurred any actual expense to provide alternative heat, such as electric space heaters, or that they were forced to temporarily move out of the Property for lack of adequate heat.

10. Inspector Wallace testified at the hearing that as a result of his inspection of the Property on November 8, 1995, he issued Respondent a notice of violation that included, in addition to other violations cited, an order to Respondent to "...eliminate the use of bedroom in basement..." by November 30, 1995. To comply with Inspector Wallace's notice of violation, on December 7, 1995, the Respondent sent the Complainants a letter (At page 10 of Commission's Exhibit #1) advising them that, "...effective immediately, the basement is not to be used for a bedroom. It is for storage only until such time as the County deems it habitable."

11. On January 9, 1996, Respondent sent Complainants a letter (At page 18 in Commission's Exhibit #1) in which he stated, "You allege that I misrepresented the premises with regard to the number of bedrooms. The billing statements from the Washington Post for the periods during which I had the property on the market clearly indicate three (copies available on request). At no point have I ever marketed the basement as a fourth bedroom. However, during informal discussions, I may have indicated that previous occupants have used it as such."

12. The Complainants failed to provide any persuasive testimony or probative evidence to support their allegation that the Respondent advertised the basement as a sleeping room or as a habitable portion of the rental Property, or that Respondent authorized Complainants to use the basement as a sleeping room. Furthermore, Complainants did not dispute Respondent's above-referenced assertion that he never, "...marketed the basement as a fourth bedroom," nor did the Complainants testify or provide evidence that they ever requested Respondent provide copies of Washington Post advertisements.

13. Regarding Complainants' allegations that Respondent's failure to clear the clogged exterior drain caused water to leak into the basement, which resulted in the formation of mildew and mold, and thus reduced the value of the leasehold, the hearing panel makes the following findings: (a) the basement was not a habitable portion of the Property; and, (b) Complainants failed to provide any testimony or probative evidence to demonstrate that any personal property

was damaged or to support their allegation that they suffered any actual damage or loss as a result of water leaks.

14. The Complainants and the Respondent did not dispute the fact that the Complainants issued the Respondent notice of their intention to quit and vacate the property at the end of the lease term, January 31, 1996, and vacated on or about January 27, 1996, having paid rent in the full through the notice period, January 31, 1996.

15. On February 5, 1996, Complainant Matt Sobocinski sent the Respondent a letter advising him that the Complainants vacated the Property as of January 31, 1996, and giving the Respondent the Complainants' new mailing address (See page 21a in Commission's Exhibit #1). The Commission finds credible the testimony of Complainant Gary Brown that he also filed a change of address with the U.S. Postal Service.

16. The Commission finds credible the testimony of Complainant Gary Brown that Complainants never received the Respondent's March 1, 1996 "Disposition of Security Deposit" or an itemized list of damages of any kind from the Respondent. Mr. Brown further testified that he first saw the "Disposition of Security Deposit" at a conciliation conference held in the Division of Consumer Affairs on April 17, 1996, and that the Respondent showed him the list but never gave him a copy.

17. The Commission did not find credible the testimony of the Respondent that the Property was damaged in excess of ordinary wear and tear as a result of Complainants' tenancy, nor did it find credible the Respondent's testimony that on March 1, 1996, he issued the Complainants an itemized list of damages together with a statement of the cost he actually incurred to repair those damages, in the amount of \$2,814.30. Although the Respondent introduced into evidence at the hearing (See Respondent's Exhibit #4), a single sheet of paper with the heading, "Disposition of Security Deposit," dated March 1, 1996, which he testified was the itemized list of damages, it did not contain the Complainants' new mailing address, or an address of any kind, and he failed to produce any cover letter addressed to Complainants. The Commission finds therefore, that the Respondent did not send an itemized list of damages to the Complainants within thirty (30) days of the date of the termination of their tenancy even though he had been provided a forwarding address for the Complainants.

18. The Respondent entered into evidence at the hearing a variety of documents regarding costs he claimed he incurred to repair and restore the Property after the termination of the Complainants' tenancy. The documents included spreadsheets, itemized expenditures to contractors, invoices and letters from 3 contractors. However, the Respondent did not offer or enter into evidence any paid receipts, canceled checks or other forms of payment made to any of the contractors for work performed. The Respondent also testified that after the termination of the Complainants' tenancy, he sold the subject Property and was no longer a landlord. The Commission was not persuaded by the Respondent's testimony or evidence and finds therefore, that he did not incur any actual expense to make repairs to the Property after the termination of the Complainants tenancy.

19. The Commission was not persuaded by the Respondent's testimony or evidence that the Property was damaged beyond normal wear and tear as a result of the Complainants' tenancy.

20. On June 6, 1996, Joe Giloley, Administrator, Office of Consumer Affairs, wrote to Respondent (At page 23 in Commission's Exhibit #1) and advised him of the following: (a) it was the determination of that agency that the Respondent improperly handled and disposed of

Complainants' security deposit plus accrued interest; (b) as a result, he had created a defective tenancy; and, (c) he should therefore refund Complainants' entire deposit plus interest. On June 14, 1996, Respondent wrote back to Mr. Giloley (At page 24a. in Commission's Exhibit #1), acknowledged receipt of the June 6th letter and stated, in pertinent part, regarding refund of Complainants' security deposit, "Just after the meeting in your office, I consulted my legal counsel and he confirmed your assertion regarding the 'defect' in the lease over the Security Deposit." The Respondent also proposed that the security deposit be held in escrow pending the outcome of any civil suit which might be filed.

21. The Respondent failed to credit the Complainants with interest accrued on their security deposit.

22. The Complainants and the Respondent entered into evidence at the hearing over 80 photographs which they described as representing the condition of the Property at various times during and after the tenancy.

Accordingly, the Commission makes the following conclusions of law based upon a fair consideration of the evidence and testimony contained in the record:

CONCLUSION OF LAW

1. The Complainants paid the Respondent a security deposit in the amount of \$1,300.00, and the Respondent issued the Complainants a written receipt for that deposit which is contained in the Lease. However, that written receipt did not contain language advising the Complainants of their right to be present for a final walkthrough inspection of the Property and the procedure for requesting such an inspection, in violation of Section 8-203(g)(1) of the State Code, and therefore, the Respondent has forfeited his right to withhold any part of the Complainants' security deposit for damages. Furthermore, the security deposit receipt did not contain language advising the Complainants of their right to receive from the Respondent a written list of all existing damages and the procedure for making such a request, in violation of Section 8-203(c)(3) of the State Code.

2. The Respondent failed to present to the Complainants by first-class mail, within thirty (30) days after the termination of their tenancy, a written list of the damages claimed against their security deposit, together with a statement of the cost actually incurred to repair that damage, in violation of Section 8-203(h)(1) of the State Code, and therefore, pursuant to Section 8-203(h)(2), the Respondent had forfeited his right to withhold any part of the Complainants' security deposit for damages.

3. The Respondent failed to provide any probative evidence or testimony to demonstrate that the damages claimed against the Complainants' security deposit were beyond normal wear and tear or that they were ever repaired, in violation of Section 8-203 (g)(1) of the State Code, and therefore, the Respondent cannot retain any portion of the Complainants' security deposit.

4. The Complainants failed to provide persuasive testimony, documentation or any probative evidence to support their allegation that the Respondent advertised the Property for rent with a specific number of bedrooms, or that he advertised the basement of the Property as habitable. Furthermore, the Complainants failed to demonstrate that they incurred any actual expense to relocate from the Property based on non-use of the basement. Therefore, it is the conclusion of the panel that no violation of law or lease occurred on the part of Respondent regarding the advertising of the Property, and the value of the leasehold was not reduced by Complainants

inability to use the basement as a sleeping room at any time during their tenancy. Therefore, the Complainants request for an abatement or refund of rent is hereby denied.

5. Although the Complainants were able to demonstrate that the Respondent failed to make necessary and required repairs to Property during their tenancy, specifically the basement water leak and defective furnace, they failed to demonstrate that they were harmed or that they incurred any actual expense as a result, and therefore, their request for damages and/or an abatement or refund of rent is hereby denied.

6. Regarding Complainants request for immediate termination of their Lease, the Commission concludes that based on the fact that Complainants vacated the Property at the end of the lease term (January 31, 1996), and prior to the public hearing, this portion of the complaint is moot, no longer at issue and does not need to be addressed in this Order.

7. The Respondent failed to credit the Complainants with interest accrued on their security deposit, in violation of Section 8-203(f)(4) of the State Code. Therefore, the Respondent is liable to the Complainants for one year's interest, at the rate of 4%, which sum is \$104.00.

8. The Respondents, without a reasonable basis, failed to return any part of the Complainant's security deposit, plus accrued interest, within 45 days after the termination of the tenancy. Therefore, pursuant to Section 8-203(f)(4) of the State Code, the Commission hereby awards the Complainants a penalty in the amount of \$500.00.

9. The Respondent's failure to handle and dispose of the Complainants' security deposit in accordance with the provisions of Section 8-203 of the State Code has caused a defective tenancy.

ORDER

In view of the foregoing, the Commission hereby orders the Respondent to pay Complainants the sum of **\$1,904.00**, which sum represents the Complainants' security deposit (\$1,300.00) plus 2 years of accrued simple interest (\$104.00), and a penalty of \$500.00).

The foregoing was concurred in unanimously by Commissioners Greg Smith, Joan Himmelhoch and Carol Papalazarus.

Should the Commission determine that the Respondent has 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 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.

Greg Smith, Chairperson

Commission on Landlord-Tenant Affairs