

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

In the matter of:*

*

Ruth Nseyo and Mary McElroy*

Complainants*

*

V.*Case No. 29627

*

Ciro Quispe and Rebeca Ledezma*

Respondents*

Rental Facility: 1104 Rosemere Avenue, Silver Spring, MD (Rental Facility License #59282)

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 (“County Code”), and the Commission having considered the testimony and evidence of record, it is therefore, this 17th day of December, 2008, found, determined, and ordered as follows:

BACKGROUND

On May 20, 2008, Mary McElroy and Ruth Nseyo (“Complainants”), former tenants at 1104 Rosemere Avenue, Silver Spring, MD (“Property”), a then unlicensed single-family rental facility in Montgomery County, Maryland, filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs (“Department”), in which they alleged that their former landlords, Ciro Quispe and Rebeca Ledezma (“Respondents”), owners of the Property: (1) without prior notice increased their rent by \$610.00 a month midway through their 12-month tenancy, which constituted a breach of the lease and increased the rent more than once in a twelve month period, in violation of Section 29-54(a), *Landlord-Tenant Relations*, of the Montgomery County Code, 2001, as amended (“County Code”); (2) failed to make needed and necessary repairs to the Property, in violation of Section 29-30(a)(3) of the County Code; and (3) rented them two bedrooms that were subsequently condemned by the Department’s Division of Housing and Code Enforcement (“Code Enforcement”), which substantially reduced the value of their leasehold for the remainder of their tenancy.

The Respondents contend that: (1) the Complainants agreed to and paid the mid-term rent increase; (2) they made all necessary repairs to the Property; and (3) they were unaware that the basement bedrooms, which were subsequently condemned by Code Enforcement, did not comply with Chapter 26, *Housing and Building Maintenance Standards*, of the Montgomery County Code (“Housing Code”), when the Property was rented to the Complainants.

The Complainants are seeking an Order from the Commission that the Respondents: (1) refund all improper rent increases they paid, \$610.00 a month for five months, January 2008 through May 2008, for a total amount of \$3,050.00, and (2) refund a portion of rent paid from May 16, 2008, the date two basement bedrooms in the Property were condemned by Code Enforcement, until the termination of their tenancy, July 31, 2008.

-2-

After determining that Case No. 29627 was not susceptible to conciliation, the Department referred this matter to the Commission for review, and on September 2, 2008, the Commission voted to conduct a public hearing on October 14, 2008.

The public hearing in the matter of Ruth Nseyo and Mary McElroy v. Ciro Quispe and Rebeca Ledezma, relative to Case No. 29627, commenced on October 14, 2008, and concluded on that date. The record reflects that the Complainants and the Respondents were given proper notice of the hearing and date and time. Present and offering evidence were the Complainants, Ruth Nseyo and Mary McElroy, the Respondents, Ciro Quispe and Rebeca Ledezma, and one witness called by the Commission, Code Enforcement Inspector Wright Jolly.

After the hearing began, the Respondents requested that a Spanish language interpreter be provided for Respondent Rebeca Ledezma. No such request was received prior to the hearing. The Commission notes that Respondent Ciro Quispe is fluent in the English language. However, shortly after the hearing began, the Department was able to locate Spanish language interpreter, Cynthia Caudillo, who is on the Montgomery County approved list of Spanish language interpreters, who assisted Respondent Ledezma for the remainder of the hearing.

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 a series of five (5) photographs of the Property taken by Inspector Jolly, identified as Commission's Exhibits 2A – 2E. Without objection, the Commission entered into the record the following exhibits offered by the Complainants: (1) three photographs of Complainant Ruth Nseyo in the dining room at the Property, collectively identified as Complainants' Exhibit No. 1; (2) two photographs of the windows in the basement of the Property that were the subject of the Department's condemnation of the basement bedrooms, collectively identified as Complainants' Exhibit No. 2; (3) three photographs - one of condemned sign, and two of the windows in one of the condemned basement rooms, collectively identified as Complainants' Exhibit No. 3; (4) a document entitled Rental Contract (Amendment), dated January 1, 2008, which increased the Complainants' rent, identified as Complainants' Exhibit No. 4; and (5) three photographs of the second condemned bedroom, collectively identified as Complainants' Exhibit No. 5A – 5C.

FINDINGS OF FACT

Based on the testimony and evidence received at the hearing, the Commission makes the following findings of fact:

1. On August 29, 2007, the Complainants and Respondents signed a one-year lease agreement ("Original Lease") for the rental of the Property, which commenced on August 1, 2007, and expired on July 31, 2008, for total rent in the amount of \$23,880.00, to be paid in 12 equal monthly installments of \$1,990.00 each by the first day of the month.
2. Paragraph 36 of the Lease, entitled "Renewal Term," states, "At the end of the initial term herein, as per page 1, owner may elect to renew for another term but at a rental increase of 3% to 5% of current rental rate depending on the market index."

-3-

3. On or about January 1, 2008, seven months prior to the expiration of the Original Lease term, the Respondents went to the Property with a new lease agreement ("2nd Lease") for the Complainants to sign. The 2nd Lease had a commencement date of January 1, 2008, and was due to expire on December 31, 2008, at a monthly rent of \$2,600.00, which represented an increase in rent of \$610.00 per month. The Commission finds credible the

testimony of Complainant McElroy that Respondent Quispe threatened to terminate their tenancy and sell the Property if the Complainants refused to sign a new lease and pay the higher rent. The Commission further finds that Respondent's Quispe's actions constitute a substantial breach of the 12-month Original Lease executed by the parties on August 29, 2007, specifically Paragraph 36, as well as a threat to improperly terminate the Complainants' tenancy and an attempt to coerce them into paying the higher rent.

4. The Complainants paid the \$610.00 rent increase to the Respondents for five consecutive months, January, 2008 through May, 2008, for a total of \$3,050.00 more than called for in the Original Lease executed by the parties on August 29, 2007.

5. At the commencement of the Complainants' tenancy, the Property had five (5) bedrooms, including two bedrooms in the basement. This finding is based on the credible testimony of the Complainants that prior to signing the Original Lease, the Respondents advertised the Property to them as having 5 bedrooms. This finding is further supported by the credible testimony of Commission's witness, Housing Code Enforcement Inspector Wright Jolly that he observed five bedrooms in the Property at the time of his inspections. The Commission did not find the testimony of Respondents to be either credible or persuasive that the Property was rented as a four-bedroom house.

6. On May 16, 2008, Code Enforcement Inspector Wright Jolly conducted an inspection of the Property and determined that the two bedrooms in the basement, both of which were occupied by members of the Complainants' household, did not meet the Housing Code requirements regarding egress and therefore, he condemned both rooms as unsafe and unfit for human habitation. The condemnation of the basement bedrooms reduced the number of usable bedrooms in the Property from five to three.

7. After the basement bedrooms were condemned, Complainants were forced to use the dining room and the living room in the Property as sleeping rooms. Complainant McElroy used the dining room as her bedroom, and another adult member of the household used the living room as his bedroom. As a result, all members of the household had to pass through Complainant McElroy's bedroom to get to the kitchen and eliminated the use of the dining room and living room for the purposes for which they were designed or intended. This finding is supported by the credible testimony of Complainant Nseyo and Inspector Jolly, as well as the photographic evidence submitted by the Complainants.

8. The non-use of the two basement sleeping rooms and the subsequent inability of the Complainants to use the living room and the dining room for the purposes for which they were designed or intended, reduced the value of the rented Property by 50% for two and one-half (2 ½) months, from May 16, 2008, until the termination of their tenancy, July 31, 2008.

9. On June 1, 2008, the Respondent voluntarily agreed to accept rent from the Complainants in the amount of \$1,990.00 a month, the amount designated in the Original Lease, for the remainder of their tenancy.

10. As of the date of the hearing, the Respondents failed to refund any of the increased amounts of rent paid by the Complainants each month from January 2008 through May 2008, totaling \$3,050.00.

11. On or about June 30, 2008, the Respondents issued written notice to the Complainants to vacate the Property at the expiration of the Lease term, July 31, 2008.

12. The Complainants vacated the Property on July 26, 2008, having paid rent in full to the Respondents, in the amount of \$1,990.00, through July 31, 2008.

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. Section 29-27(n) of the County Code requires that a rental property be delivered to tenants at the commencement of their tenancy "...in a clean, safe and sanitary condition...and in complete compliance with all applicable laws."Based on Inspector Jolly's condemnation of the two basement bedrooms in the Property as unsafe and unfit for human habitation, the Commission concludes that the Respondents failed to deliver the two basement bedrooms in the Property to the Complainants at the commencement of their tenancy in a safe and habitable condition, which constitutes a serious and substantial breach of the Original Lease and a violation of Section 29-27(n) of the County Code, and has caused a defective tenancy.

2. The condemnation of the two basement bedrooms in the Property on May 16, 2008, reduced the number of usable bedrooms in the Property from 5 to 3 and forced the Complainants to use the living room and the dining room as sleeping rooms which reduced the value of the Property from May 16, 2008 through July 31, 2008, during which time the Complainants paid rent in full to the Respondents.

3. Section 29-1 of the County Code defines a defective tenancy as "[a]ny condition in rental housing that violates a term of the lease, this Chapter or any other law or regulation."

4. Section 29-47 (a) of the County Code sets out the actions this Commission may take when a defective tenancy exists. In addition, Section 29-47(b)(1) through (7) provides remedies and the amount of damages the Commission may award. Section 29-47(b)(4) states:

29-47. Commission action when violation found.

(b) If the **Commission** or panel finds that a **landlord** has caused a defective tenancy, it may award each party to the complaint one or more of the following remedies:

(4) Return of all or part of any rent already paid to the landlord after the landlord was notified of the condition.

5. The Respondents were notified of the condemnation of the two basement rooms on May 16, 2008, but continued to charge the Complainants full rent through the termination of the tenancy, July 31, 2008. Based on the Complainants' inability to use the two condemned bedrooms as sleeping rooms, or the living room and dining room for the purposes for which they were designed and intended, the Commission concludes that the value of the Property was reduced by 50% during the final two and one-half (2 ½) months of the Complainants' tenancy, May 16, 2008 through July 31, 2008, which sum is \$2,640.00 calculated as follows: \$2600 monthly rent for May 2008 /2= \$1,300 x .5 = \$650.00 plus \$1,990.00 (June and July) monthly rent x .5 = \$995.00 x 2 months = \$1990.00; \$650 + \$1,990.00 = \$2,640.00. As a result, pursuant to Section 29-47(b)(4) of the County Code, the Complainants are entitled to a refund of rent already paid to the Respondents in the amount of \$2,640.00.

6. While the Respondents contend that the original lease was amended in writing and signed by all parties, that amendment fails for lack of new consideration. The Respondents do not have a right to modify a contract merely because they found in light of changed conditions (here, it is believed to be an increase in their monthly mortgage payment). *Janusz v. Gilliam*, 404 Md. 524, 535, 947 A.2d 560, 566 (2008). See *Hercules Powder Co. v. Harry T. Campbell Sons Co.*, 156 Md. 346, 144 A. 510 (1929). While amendments to contracts are routinely enforced, an amendment requires some form of new consideration in order to be enforceable. Here, the Respondents did not provide any new promise to the Complainant nor was there any uncertainty as to their obligations under the original lease. As such the new lease entered into is voidable by the Complainant.

7. Even if the new lease agreement could be enforced by Respondents, Section 29-54(a) (1)-(5) of the County Code requires that a landlord provide two full calendar months written notice to a tenant to increase the rent that includes the following disclosures to the tenant: the amount of the increase, the effective date of the increase, the percent change, the voluntary guideline issued by the County Executive and the Complainants' right to contact the Department if they believed the increase to be excessive. The Respondents failed to issue the Complainants a two month notice of rent increase before raising the rent at the Property that complied with Section 29-54(a) (1)-(5) of the County Code, and has caused a defective tenancy.

8. The Commission concludes that the rent increase imposed on the Complainants on or about January 1, 2008, seven months prior to the expiration of the Original Lease term, constitutes a breach of the Original Lease which was not due to expire until July 31, 2008, a breach of Paragraph 36 of the Original Lease, an improper notice of rent increase and a violation of Section 29-54 of the County Code, and an attempt by the Respondents to coerce the Complainants into paying a higher rent under the threat of eviction.

9. As stated previously, Section 29-1 of the County Code defines a defective tenancy as “[a]ny condition in rental housing that violates a term of the lease, this Chapter or any other law or regulation.”

10. Also stated previously, Section 29-47 (a) of the County Code sets out the actions this Commission may take when a defective tenancy exists. Pursuant to this section, the Commission may, “require the respondent to stop any unlawful conduct and take appropriate action to comply with this Chapter.” Section 29-47 (b) (5) goes on to enumerate damages that may be awarded:

29-47. Commission action when violation found.

(b) If the **Commission** or panel finds that a **landlord** has caused a defective tenancy, it may award each party to the complaint one or more of the following remedies:

(5) An award of damages sustained by the tenant as a result of the defective tenancy, limited to the actual damage or loss incurred by the tenant. The award must not exceed \$2,500 per affected dwelling unit.

This Commission has consistently, in cases that have come before it, interpreted the word “condition” in the definition of “defective tenancy” very broadly to include not only conditions relating to the habitability of rental housing, but also notices and procedures that must be followed pursuant to County and State law. For example, the Commission has consistently found that where a landlord fails to comply with the notice requirements in State law regarding the disposition of security deposits, the landlord has created a defective tenancy. As such, the Commission concludes that issuing a defective notice of rent increase that does not comply with the requirements of Section 29-54 of this Chapter creates a defective tenancy.

11. Having found that the Respondent created a defective tenancy by issuing to the Complainants a notice of rent increase that violated Section 29-54 of the County Code, as well as Paragraph 36 of the Original Lease, the Commission concludes that the Complainants paid a rent increase to the Respondents pursuant to an invalid rent increase notice issued on January 1, 2008, sustained damages as a result of paying a rent increase pursuant to an invalid rent increase notice, and are entitled, in addition to a rent refund in the amount of \$2,640.00, a damage award pursuant to Section 29-47(b)(5) of the County Code, not to exceed \$2,500.00.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondents must pay the Complainants **\$5,140.00**, which amount represents damages incurred by the Complainants as a result of the improper notice of rent increase (\$2,500.00), plus a refund of 50% of the rent paid by the Complainants for the period May 16, 2008 through July 31, 2008 (\$2,640.00).

Commissioners Jay Hutchins, Commissioner Deanna Stewart, and Commissioner Matthew Moore, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondents, **Ciro Quispe** and **Rebeca Ledezma**, 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 **Ruth Nseyo** and **Mary McElroy** in the full amount of **\$5,140.00**.

The Respondents are 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 \$500.00 civil citation and \$500.00 fine (Class A violation), 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 pursuant to Section 29-48(c) of the County Code.

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. Be

advised that pursuant to Section 29-49 of the County Code, should the Respondents choose to appeal the Commission's Order, they must post a bond with the Circuit Court in the amount of the award (\$5,140.00) if they seek a stay of enforcement of this Order.

Matthew Moore, Panel Chair

Commission on Landlord-Tenant Affairs