

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

In the matter of:

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Janice Abrahams

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Complainant

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V.

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Case No. 31274

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Kim Mancuso

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Respondent

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Rental Facility: 11803 Old Columbia Pike, #89, Silver Spring, MD (License #61690)

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 7th day of May 2010, found, determined, and ordered, as follows:

BACKGROUND

On November 19, 2009, Janice Abrahams ("Complainant"), former tenant at 11803 Old Columbia Pike, #89, Silver Spring, MD ("Property"), a licensed rental property 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 she alleged that her former landlord, Kim Mancuso, owner of the Property ("Respondent"): (1) charged her an additional \$129.00 monthly rent, which is contrary to the terms and conditions of Part C, Paragraph 5 (a) and (e) of the Housing Assistance Payment (HAP) contract, between the Respondent and the Housing Opportunities Commission (HOC); (2) took a rent overpayment in the amount of \$650.00 for the month of August 2009; and, (3) failed to credit her security deposit with interest, in violation of Maryland Code (1954, 2003 Repl. Vol., 2007 Suppl.), Section 8-203 (e) (1) of the Real Property Article, ("Real Property Article").

The Complainant is seeking an Order from the Commission for the Respondent to refund her \$1,452.05 which sum represents: (1) \$774.00 paid as additional rent for the time period January 2009 through June 2009; (2) \$650.00 rent overpayment for the month of August 2009; and, (3) \$28.05 accrued interest on the 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 February 2, 2010, the Commission voted to hold a public hearing on March 31, 2010. The public hearing in the matter of Janice Abrahams v. Kim Mancuso, relative to Case No. 31274, commenced on March 31, 2010, and concluded on that date.

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: (1) the Complainant, Janice Abrahams and her attorney, Sander Davidson; (2) the Respondent, Kim Mancuso and her attorney, Hasson Barnes; (3) Mrs. Mancuso's son, Gary Miller; and (4) Antonia Adams, subpoenaed by the Commission as a witness and representing the Housing Opportunities Commission (HOC).

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 evidence the following exhibits offered by the Respondent: (1) Ms. Janice Abrahams rental application, identified as Respondent's Exhibit No. 1, (2) Craigs' list advertisement relative to the Property, identified as Respondent's Exhibit No. 2; (3) Rental applications of other prospective tenants to the property, identified as Respondent's Exhibit No. 3; and, (4) a second lease for the Property allegedly signed by the Complainant and the Respondent, identified as Respondent's Exhibit No. 4.

FINDINGS OF FACT

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

1. On December 29, 2008, the Respondent and the Complainant signed a one-year lease agreement ("Lease") for the rental of the Property, which commenced on January 1, 2009, and expired on December 31, 2009. This lease was for a monthly rental rate of \$1,842.00. However, it also referenced an additional rental amount of \$1,548.00, or the equivalent of \$129.00 per month, for a 12 month period;
2. Paragraph 3 of the Lease, entitled "Security Deposit" states that the Complainant paid the Respondent a security deposit in the amount of \$1,842.00; however, the parties agreed that the amount of the security deposit received by the Respondent was \$1,870.00;
3. The Respondent alleged that a second lease, dated also December 29, 2008, and entered as Respondent's Exhibit #4, stipulated that the monthly rent was \$1,842.00 only. The Commission does not find the second lease to be legitimate or this allegation credible, because the Complainant did not recognize her signature or the handwriting on the alleged lease as her own, nor did it resemble the Complainant's signature on other documents in the record;
4. The Commission finds that Respondent applied to, and was accepted into, the HOC Housing Choice Voucher program as a participating landlord shortly before entering into the Lease with Complainant;
5. The Commission finds that pursuant to HOC records, on December 26, 2008, (Commission Exhibit 1, page 12) (hereinafter the "HOC Contract") the Respondent signed a document in which she agreed to the following:

"...I hereby agree to a total monthly rent of \$1,842 for the property located at 11803 Old Columbia Pike, Silver Spring, MD be rented to Janice Abrahams under the Housing Choice Voucher Program. The rent amount of \$1,842 does include water/sewer, trash collection. The tenant will be responsible for all other utilities..."

This document further provides that:

"...There will be **no other payments** made to me by the tenant other than the amount stated on the Housing Assistance Payment (HAP) contract to be sent to me by the Housing Opportunities Commission (HOC).

I will not collect any side payments from the tenant. If this program violation should occur, it is understood that the contract between HOC and me, as well as, the tenant's subsidy can be terminated..."

6. The Commission finds credible the testimony of Antonia Adams, Customer Service Manager, HOC, that the HAP contract relative to the Property was mailed to the Respondent, and that the Respondent failed to execute it and mail it back to HOC;

7. During her entire tenancy, the Complainant was a participant in the HOC's Housing Choice Voucher Program, and HOC paid part of her rent. The Complainant's rent portion at the commencement of the lease was \$447.00 and HOC's portion of the rent was \$1,395.00;

8. The Commission finds that the Respondent accepted payments from HOC on behalf of the Complainant's rent throughout the entirety of the Complainant's tenancy (January 1, 2009, through August 31, 2009);

9. The Commission finds that from January 2009, through June 2009, the Complainant made two separate monthly rent payments to the Respondent, one for \$447.00, and one for \$129.00;

10. The Commission finds that the Complainant paid a total of \$774.00 in rent above and beyond the amount permitted under the HOC Contract;

11. By a letter dated June 23, 2009, the Respondent informed the Complainant of her decision to terminate the Lease as of July 23, 2009, even though the Lease was not due to expire until December 31, 2009;

12. By a letter dated July 1, 2009, HOC advised the Respondent and the Complainant that effective August 1, 2009, the Complainant's portion of the monthly rent was being increased from \$447.00 to \$866.00;

13. On August 10, 2009, the Complainant paid the Respondent \$866.00 as her portion of the rent, for the month of August 2009;

14. On August 16, 2009, HOC made an interim adjustment to the HAP contract #t0007046 (Commission Exhibit 1, page 16), which decreased the Complainant's portion of the monthly rent from \$866.00 to \$216.00, retroactively effective as of August 1, 2009;

15. The Commission finds that HOC made a rental payment in the amount of \$1,626.00 to the Respondent (Commission Exhibit 1, page18), for the August 2009, rent;

16. The Commission finds that the Complainant's portion of the rent for the month of August 2009, was \$216.00, and she paid the Respondent \$866.00, which reflects a \$650.00 rent overpayment;

17. On August 31, 2009, the Complainant vacated the Property, having paid rent in full through that date;

18. The Commission finds that the Respondent failed to credit the Complainant's security deposit with the correct amount of simple interest which had accrued on her \$1,870.00 security deposit from the commencement of her tenancy, January 1, 2009, until the termination of her tenancy, August 31, 2009.

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 29-1 of the 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."

On December 26, 2008, Respondent entered into a contract with HOC, as reflected in the record as Commission Exhibit 1, page 12, wherein Respondent agreed to rent for "a total monthly rent of \$1,842.00 for the property located at 11803 Old Columbia Pike, Silver Spring, MD" "to Janice Abrahams," and explicitly stated that "[t]here will be no other payments made to [Respondent]" by the tenant other than the \$1,842.00 permitted by the HOC program.

Respondent applied to become a participating Landlord in the HOC's Housing Choice Voucher Program, signed the HOC contract, accepted Complainant, a voucher recipient, as her tenant, and accepted payments from HOC on behalf of the Complainant for the entirety of her tenancy. Hence, the Commission concludes Respondent was contractually and legally bound to comply with the HOC rental voucher program terms and restrictions, and with the HOC contract she signed, despite her failure to sign the HAP contract.

24 C.F.R. § 982.451, Housing assistance payments contract, provides in pertinent part:

(b)(3) The total of rent paid by the tenant plus the [HOC] housing assistance payment to the owner may not be more than the rent to owner. The owner must immediately return any excess payment to [HOC].

(b)(4)(B)(ii) The owner may not demand or accept any rent payment from the tenant in excess of this maximum, and must immediately return any excess rent payment to the tenant.

The Commission concludes that the Lease entered into by Complainant and Respondent on December 29, 2008, requiring Complainant to pay an additional \$1,548.00, or the equivalent of \$129.00 per month, for a 12 month period is in clear violation of 24 C.F.R. § 982.451, and, as such, was *void ab initio*. Respondent therefore had no right to collect or retain, the additional rents paid pursuant to such Lease.

The Commission further concludes that the Respondent's acceptance of and failure to return the \$774.00 in additional, or "side," payments from the Complainant, and the failure to immediately return the overpayment for August 2009, also constituted a violation of 24 C.F.R. § 982.451, as well as a breach of Respondent's agreement with HOC – to which the Respondent was a direct beneficiary- and therefore created a defective tenancy;

2. The Commission concludes that the Respondent's failure to pay the Complainant interest which had accrued on her security deposit in the amount of \$28.05 constitutes a violation of Section 8-203(e) (1) of the Real Property Article, and has created a defective tenancy.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondent must pay the Complainant **\$1,452.05**, which sum represents the Complainant's overpayment of rent (\$1,424.00) plus accrued interest (\$28.05) on the Complainant's security deposit during the eight months of her tenancy.

Commissioner Katia Cervoni, Commissioner Beverly Flanagan, and Commissioner Nancy Cohen, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondent, Kim Mancuso, 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 Janice Abrahams, in the amount of \$1,452.05.

The Respondent, Kim Mancuso, 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 Respondent has 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. Be advised that 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 (\$1,452.05) if she seeks a stay of enforcement of this Order.

Nancy Cohen, Panel Chairperson
Commission on Landlord-Tenant Affairs