

Before the

Commission on Landlord-Tenant Affairs

for Montgomery County, Maryland

In the Matter of Dean and Cathy Baird Complainant	
v.	Case No. 4406
 Nora Puichin Szeto, and Irene Linchun Szeto 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 (Code), and the Commission having considered the testimony and evidence of record, it is, therefore, this 11th day of May, 1998, found, determined and ordered, as follows:

BACKGROUND

On July 8, 1997, Dean and Cathy Baird (the "Complainants"), filed a complaint with the Division of Housing and Code Enforcement, of the County Department of Housing and Community Affairs (the Department), in which they alleged that Nora Puichin Szeto and Irene Linchun Szeto (the "Respondents"), owners of 11710 Castlewood Drive, Potomac, Maryland (the "Property"), a single-family rental property in Montgomery County, MD: 1) failed to deliver the Property to them at the commencement of the lease term, July 1, 1997, in a clean, safe and sanitary condition, in violation of Section 29-26(n) of the County Code; and, 2) refused to refund their security deposit and first month's rent after they notified the Respondents in writing of their intention not to take possession of the Property.

The Complaints are seeking a refund of their entire security deposit (\$2,000.00), the first month's rent (\$2,000.00), and costs they incurred to stay in a hotel for eight days (\$400.00), for a total award of \$4,400.00.

This matter was heard by the Commission on February 24, 1998. 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. Both the Complainants, Dean and Cathy Baird, who were represented by attorney, David Rothenstein, and Respondent, Nora Puichin Szeto, on behalf of herself and her sister, co-owner Irene Linchun Szeto, were present. The Respondent called two witnesses, John O'Donnell, an electrical engineer, and Edmond Ko, a listing agent with Long & Foster Realtors. Each of these five witnesses testified under oath.

The key issues in this case are: 1) whether the Complainants are entitled to the return of the security deposit and first month's rent paid to the Respondents because, according to the Complainants, the Property was not in compliance with a County requirement that premises be in a clean, and sanitary condition when they were let to the Complainants, and 2) whether the Complainants are entitled to be reimbursed for the cost they incurred to stay in a hotel until they were able to secure alternative rental housing.

There are certain material facts as to which there appears to be no dispute. The Respondents are the owners of the Property, and on April 16, 1997, the Complainants executed a lease with the Respondents, through their agent, Edmond Ko, to commence on July 1, 1997, and was set to expire on June 30, 1998. It was expected that the Complainants would move in on July 1, 1997.

The Commission entered into evidence, as Commission's Exhibit No. 1, the contents of the case file compiled by the Division of Housing and Code Enforcement,

Landlord-Tenant Program. There was no objection by the Complainants, their attorney or by the Respondent.

Both the Complainants and the Respondent had previously submitted photographs which are contained in Commission's Exhibit No. 1. Complainant Dean Baird testified that he first viewed the Property in early April 1997 at which time the Property was occupied by the Respondents, and that it was in good condition. He also testified that, based on that inspection, he and his wife, Cathy Baird, signed the lease with the Respondents. The Complainants both testified that on July 1, 1997, when they arrived to take possession of the Property, it was unclean and unsanitary and there were certain other deficiencies present, and the photographs they submitted (Pages 10-23 of Exhibit No. 1), taken on July 1, 1997, accurately depict the condition of the Property on that date. They further testified that based on the condition of the Property, they decided not to move in and never took possession, and on July 3, 1997, they issued a termination notice to the Respondents' agent (See page 3 of Commission's Exhibit No. 1).

Complainant Cathy Baird also testified that prior to coming from Hawaii, they had made a reservation to stay at a local hotel on the night of July 1, 1997; however, based on their inability to take possession of the Property on July 1, 1997, she and her family were forced to stay in the hotel for several additional days. The Complainants failed to submit into evidence any documentation regarding this claim.

The Respondent did not entirely dispute the Complainants' contention regarding certain conditions of the Property on July 1, 1997, and testified that there was a trash can at the curbside awaiting pick-up (Complainants' photographs at Page 10 of Commission's Exhibit No. 1), the grass needed cutting, and there were boxes and bags on the porch awaiting pick-up by a local charitable organization (Complainants' photograph at Page 11 of Commission's Exhibit No. 1). The Respondent further testified that she had the Property professionally cleaned by Hang Fong O'Donnell on June 29, 1997, prior to the Complainants' arrival, and that any minor deficiencies identified by the Complainants in their walkthrough inspection with Realtor Edmond Ko on July 1, 1997, were immediately corrected, including having Ms. O'Donnell return to do additional cleaning, as evidenced by the photographs contained at pages 41-63 of Commission's Exhibit No. 1, taken on July 4, 1997. She testified that all repairs were completed by July 3, 1997.

The Respondent called witnesses Edmond Ko and John O'Donnell to testify. Mr. Ko testified that he conducted a walkthrough inspection of the Property with the Complainants on July 1, 1997, and, at that time, he acknowledged the existence of several minor deficiencies described by the Complainants, and told them he would contact the Respondents to have them corrected. Mr. O'Donnell testified that on the

evening of July 1, 1997, he went to the Property and dismantled the stove so that it could be thoroughly cleaned at that time. He also testified that the holes in the drywall of the ceiling in the first floor bathroom were created to repair a previous water leak which had been repaired, and that in his professional opinion as an electrical engineer, the holes did not constitute a safety hazard.

The Respondent also submitted into evidence at the hearing the following documents: a copy of the Rental Listing Agreement with Long & Foster Realtors, dated February 6, 1997 (Respondents' Exhibit No. 1), a notarized statement from Wai Kit Man regarding the repair of the bathroom ceiling (Respondents' Exhibit No. 2), and a notarized statement from Hang Fong O'Donnell asserting that she cleaned the 2 bathrooms in the Property on June 29, 1997, prior to the commencement date of the lease (Respondents' Exhibit No. 3).

Here the determination of this issue is dependent on the interpretation and application of specific statutory and regulatory provisions, and the specific facts of this case. Section 26-8 (d) of the Code provides that "No owner or operator shall occupy or initially let to any other occupant any vacant dwelling or rooming unit unless it is "clean, sanitary, and fit for human occupancy. Section 29-26 (n) of the Code provides that each lease for a rental facility located in Montgomery County must "contain a covenant that the landlord will deliver the leased premises and all common areas in a clean, safe, and sanitary condition, free of rodents and vermin, and in complete compliance with all applicable laws." The subject lease has such a provision (See page 5 of Commission's Exhibit No. 1). See, also, Code Section 29-30 (a)(1), which requires landlords to comply with all applicable provisions of any federal, state or county statute, code, regulation or ordinance governing the maintenance of the dwelling unit and rental facility."

Upon consideration of the testimony and documentary evidence submitted herein, including the photographs submitted by the parties, the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

(1) Prior to execution of the lease, Complainant Dean Baird inspected the premises with the Respondents' agent, Edmond Ko, at which time he did not observe any defects or deficiencies.

(2) After Mr. Baird viewed the Property, on April 16, 1997, the Complainants and the Respondents entered a lease for the single family house at 11710 Castlewood Drive, Potomac, Maryland.

(3) The lease commencement date was July 1, 1997, and the expiration date was June 30, 1998. It was anticipated that the Complainants would take occupancy on July 1, 1997.

(4) The Complainants paid the Respondents a security deposit of \$2,000.00, and the first month's rent in the amount of \$2,000.00.

(5) On July 1, 1997, at the time they were to take possession, both Complainants inspected the premises with the Respondents' agent, Edmond Ko, at which time they observed and documented certain deficiencies. Mr. Ko acknowledged the existence of the deficiencies and agreed to contact the Respondents to have them corrected.

(6) The conditions reflected in the photographs submitted by the Complainants, at pages 10 to 23 of Exhibit 1 (the Commission file), fairly and accurately represent the condition of the Property on July 1, 1997, and the photographs submitted by the Respondents at pages 41-63 of Exhibit 1 (the Commission file), fairly and accurately represent the condition of the Property on July 4, 1997, after the deficiencies were corrected.

(7) On July 1, 1997, the Property was in compliance with all applicable laws, codes, and regulations. The deficiencies noted by the Complainants on July 1, 1997, including the holes in the bathroom ceiling, did not individually or collectively constitute a violation of Section 26-8 or Section 29-26(n) of the County Code, or a substantial breach of the lease agreement by the Respondents.

(8) The Respondents corrected all of the referenced minor deficiencies in the Property within 48-72 hours, by July 3, 1997.

(9) The Complainants never took possession of the Property, and issued written notice to the Respondents on July 3, 1997, terminating the lease.

(10) After receiving the referenced July 3rd notice from the Complainants, the Respondents expeditiously attempted to re-let the Property; accepted a new rental application on August 19, 1997, and on August 25, 1997, prepared and executed a new lease for the re-rental of the Property with a commencement date of September 7, 1997.

CONCLUSIONS OF LAW

1. Chapter 26, Housing and Building Maintenance Standards, of the County Code provides basic, minimum standards for human habitation, and Section 29-26(n), Landlord-Tenant Relations, of the County Code requires only that the rental facility be delivered in a clean, safe and sanitary condition, free of rodents and vermin, and in complete compliance with all applicable laws. In determining if the conditions of a Property warrant refusal to take possession and termination of the lease, certain factors need to be considered. Factors to be considered include whether the deficiencies, which may be minor in nature, rise to the level of housing code violations, the nature, the number, and the severity of code violations, how long any code violations have existed, whether the landlord has notice of the violations and has been given a reasonable opportunity to cure them.

2. As a matter of law, even taking into account the deficiencies noted above, the Complainants failed to provide sufficient probative testimony or evidence to demonstrate that the Property was delivered to them in an unclean, unsafe or unsanitary condition, or that the Property was uninhabitable at the commencement of the lease term, July 1, 1997, or that any of the deficiencies described and documented rise to the level of housing code violations or in any way constitute a violation of Chapter 26 or Chapter 29 the County Code.

3. Because of the foregoing, the Complainants were not within their rights to terminate the lease, and by doing so, breached the lease.

4. The Respondents fulfilled their duty to mitigate damages based on the Complainants' breach of the lease by expeditiously advertising and re-renting the Property as of September 7, 1997.¹

5. The Respondents did not breach the lease agreement with the Complainants and therefore, did not cause a defective tenancy.

¹See Section 8-207 of the Real Property Article, Annotated Code of Maryland, 1996, and *Wilson v. Ruhl*, 277 Md. 607, 356 A.2nd 544 (1976)

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ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby finds that no violation of applicable law or lease has occurred on the part of the Respondents or their agents, and that the Respondents have not caused a defective tenancy. It is, therefore, Ordered that Case No. 4406, Baird v. Szeto is DISMISSED.

The foregoing decision was concurred in unanimously by Commissioner Edward Myers, Commissioner Jonathan Smith and Commissioner Greg Smith, Panel Chair.

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, Panel Chairperson

Commission on Landlord-Tenant Affairs