

Before the

Commission on Landlord-Tenant Affairs

for Montgomery County, Maryland

In the Matter of William Wharton & Stephanie Wharton Complainants	
v.	Case No. H-1516
 Mervyn Schwedt & Hania Schwedt Rental Facility: 1516 Windham Lane, Silver Spring, MD 20912 Respondents	

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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, and the Commission having considered the testimony and evidence of record, it is, therefore, this 8th day of July 1997, found, determined and ordered, as follows:

BACKGROUND

On March 8, 1996, William and Stephanie Wharton ("the Complainants"), occupants of 1516 Windham Lane, Silver Spring, Maryland ("the Property"), a licensed single-family dwelling in Montgomery County, Maryland, filed a formal complaint with the Division of Consumer Affairs, in which they alleged that Mervyn and Hania Schwedt ("the Respondents"), owners of the Property, failed to deliver the Property to them at the commencement of the lease term, December 20, 1995, in compliance with Chapter 26, "Housing and Building Maintenance Standards," of the Montgomery County Code, 1994, as amended ("County Code"), and Paragraph 28 of the lease agreement ("Lease") and as a result, the Property was uninhabitable, the value of the leasehold was substantially reduced and they incurred actual expense to make necessary repairs.

After determining that the matter 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 review. On September 3, 1996, the Commission determined to hold a public hearing ("Hearing"), which commenced on November 19, 1996. The Commission conducted the November 19, 1996 Hearing with the Respondents in *absentia*. The Record reflects that the Respondents were given adequate notice of the Hearing date and time and made no request for an extension of time or postponement of the Hearing.

However, before rendering a decision, the Commission, pursuant to Section 2.2 of Appendix L, "Regulations on Commission on Landlord-Tenant Affairs," ("Appendix L") of the County Code, re-opened the record of the Hearing to receive additional evidence and information related to the condemnation of the Property by Montgomery County, Maryland, and accordingly, the Hearing was reconvened on February 18, 1997.

Present at one or both nights of the Hearing and giving testimony were the Complainants, William and Stephanie Wharton, their attorney, Craig Lawrence Holcolm, Respondent Hania Schwedt, Housing Code Enforcement Inspectors John Whitt and Steven Borkoski and Division of Consumer Affairs Investigators Michael Denney and John Lewis.

At the request of the Respondent, the Hearing record remained open until March 4, 1997, to accept certain documents. Furthermore, 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 County Code, and hereby decides as follows:

FINDINGS OF FACT

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

1. On December 20, 1995, the Complainants and the Respondents executed a two (2) year lease agreement ("the Lease") for the rental of the Property, which commenced on December 20, 1995, and was due to expire as of December 31, 1997.
2. On December 20, 1995, the Complainants paid the Respondents a security deposit in the amount of \$1,000.00, which was properly receipted in the Lease.
3. Inspector Borkoski testified at the Hearing that the Property was condemned by Montgomery County on July 29, 1994 because of outstanding housing code violations (see Commission's Exhibit #2), and that he rescinded the Condemnation Order on September 29, 1994, after the Respondents corrected those violations. Therefore, at the time the Lease was executed by the Complainants and the Respondents, December 20, 1995, the Property was not condemned by Montgomery County.
4. The Commission finds credible the testimony of the Complainants regarding the condition of the Property on December 20, 1995, and that because of existing housing code violations, including plumbing leaks in the bathroom, a defective stove and refrigerator, rodent infestation and a non-working furnace which resulted in the lack of adequate heat, they were unable to take possession of the Property at the commencement of the Lease term, December 20, 1995; they testified that they took possession on April 1, 1996.

The Complainants' testimony was supported by Inspector John Whitt who testified on the first night of the Hearing, November 19, 1996, that based on a complaint filed by the Complainants, he inspected the Property on February 9, 1996, and on February 13, 1996, he issued a Notice of Violation to the Respondents and ordered them to correct 14 violations of the Montgomery County Code including, among other items, rodent infestation, defective refrigerator, defective stove and water leaks. (See Commission's Exhibit #2). Inspector Whitt also testified that on April 5, 1996, he issued an Emergency Field Notice to the Respondents to repair or replace a defective furnace.

The Commission did not find credible the Respondent's testimony that the furnace at the Property had been newly installed, was still under warranty in December 1995,

and was in good working condition at the commencement of the Complainants' tenancy. The Respondent requested that the Hearing record remain open until March 4, 1997, to allow her the opportunity to produce the furnace installation invoice and the warranty information. The record was left open for the Respondent's submission however, she failed to submit any invoice or warranty information.

5. The Commission finds credible the testimony of the Complainants that the Respondents failed to make any needed and necessary repairs to the Property at any time during the term of their tenancy, December 20, 1995 through the night of the Hearing, February 18, 1997.

The Complainants' testimony was supported by Inspector Whitt who testified on the first night of the Hearing, November 19, 1996, that subsequent re-inspections of the Property between February 1996 and September 1996, revealed that the Respondents failed to repair any of the housing code violations cited on February 13, 1996, and as a result, on May 15, 1996, he issued the Respondents six (6) Class A Civil Citations. He further testified that the Respondents failed to pay the fines and failed to appear in the District Court for trial on or about September 10, 1996.

Furthermore, based on the contents of the Hearing record and the credible testimony of the Complainants, the Commission finds that, based on a complaint filed by the Complainants in the District Court of Maryland (Civil Case No. 0601001394696), on July 29, 1996, an escrow account was established by the Court, and the Complainants were ordered to pay all future rents, beginning with July 1996, into that account. The Commission finds credible the testimony of the Complainants that as of the date of the Hearing, February 18, 1997, all rents owed to the Respondents after June 1996, had been paid into the escrow account established by the Court.

6. The Commission finds credible the testimony of the Complainants that, based on the code violations, they did not take possession of the Property until April 1, 1996, that they paid \$1,000.00 a month rent to the Respondents during the period December 20, 1995, through July 1996, and that during the period December 31, 1995 through March 31, 1996, the period of time the Property was uninhabitable, they also paid rent to Complainant William Wharton's mother, K.L. Wharton, at the rate of \$75.00 per week. In support of their testimony, the Complainants introduced into evidence at the Hearing thirteen (13) cash rent receipts, each in the amount of \$75.00, signed by K.L. Wharton. (See Complainants' Exhibits 1a. through 1m.)

7. The Commission finds credible the testimony of the Complainants that at the commencement of their tenancy, December 20, 1995, there were numerous plumbing leaks in the Property, that they notified the Respondents about these leaks, and that the Respondents failed to make the necessary repairs. The Commission concludes that

based on the Respondents' failure to make repairs, the Complainants incurred an extraordinary water bill from the Washington Suburban Sanitary Commission ("WSSC"), in the amount of \$427.98 (See Complainants' Exhibit #2).

8. The Commission also finds credible the testimony of the Complainants that based on the Respondents' failure to make plumbing repairs referenced above, they incurred actual expense to repair plumbing leaks in the Property in the amount of \$166.00. In support of their claim, the Complainants submitted into evidence two (2) paid receipts from Roto-Rooter Services Company: (a) Invoice No. 9619360, dated September 20, 1996, in the amount of \$71.00, to repair the first floor bathroom toilet (See Complainants' Exhibit #4); and, (b) Invoice No. 9619621, dated September 24, 1996, in the amount of \$95.00, to rebuild a leaking bathtub faucet in first floor bathroom (See Complainants' Exhibit #3).

9. The Commission does not find credible the testimony of the Respondent that the Property normally rented for \$1,400.00 a month, or that she leased it to the Complainants in an "as is" condition at a reduced rate of \$1,000.00 pursuant to Paragraph 3 of the Lease, a handwritten provision that required the Complainants to "...perform any and all repairs necessary at their sole expense.." (See page 6 of Commission Exhibit #1). Based on questioning by the Commission, the Respondent testified that Paragraph 3 of the Lease was filled in at the time the Complainants signed the Lease on December 20, 1995, and further, that the Complainants acknowledged the provision by placing their initials next to it on the original copy of the Lease. The Respondent agreed to provide the Commission with the original copy of the Lease, and the record was left open until March 4, 1997, for the Respondent's submission. However, the Respondent failed to submit any additional documents pertaining to the Lease.

Furthermore, in the absence of the original Lease document, the Commission finds credible the testimony of the Complainants that Paragraph 3 of the Lease was blank when they signed it on December 20, 1995, that they never agreed to make any and all repairs to the Property other than to do some painting on the interior, and that despite repeated requests to the Respondents, they did not receive a copy of the Lease for several months, at which time they discovered the handwritten provisions of Paragraph #3.

10. On March 4, 1997, the Complainants issued to the Respondents a notice of their intention to vacate the Property on or before April 3, 1997. A copy of the Complainants' notice was received by the Division of Consumer Affairs on March 4, 1997, while the Hearing record in this matter remained open, and therefore, it is included as part of the Hearing record.

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 Respondents caused a defective tenancy and breached the Lease with the Complainants by failing to deliver the Property to the Complainants at the commencement of the lease term, December 20, 1995, in a habitable, clean, safe and sanitary condition, free of rodents and vermin, and in complete compliance with all applicable laws, in violation of Chapter 26, "Housing and Building Standards," Section 29-26(n) of the County Code, and Paragraph 28 of the Lease. Furthermore, Paragraph 3 of the Lease, the "as is" provision, is contrary to law because if the Property were rented in an "as is" condition it would be uninhabitable and in violation of Chapter 26 of the County Code, and is therefore unenforceable.

2. Based on the uninhabitable condition of the Property at the beginning of the Lease term, December 20, 1995, including the lack of adequate heat, the Complainants were unable to take possession at that time. The Complainants did not take possession of the Property until April 1, 1996, and therefore, all rent owed to the Respondents by the Complainants for the period December 20, 1995, through March 31, 1996, is abated.

3. Although the Complainants took possession of the Property on April 1, 1996, the Commission concludes that Respondents caused a defective tenancy by failing to make necessary and needed repairs to the Property which reduced the value of the leasehold by one-half (\$500.00) for three (3) months, April 1, 1996 through June 30, 1996.

The Commission makes no determination regarding the value of the leasehold beyond June 30, 1996, based on the complaint filed in the District Court of Maryland by the Complainants on July 29, 1996, Civil Case No. 0601001394696. The Commission concludes that the value of the subject leasehold after June 30, 1996, will be determined by the District Court when it disposes of the escrow account it established on July 29, 1996.

4. The Respondents caused a defective tenancy by failing to repair plumbing leaks in the Property during the Complainants' tenancy, which was their obligation pursuant to Chapters 26 and 29 of the County Code, and based on the Respondents' failure to

repair, the Complainants incurred actual expense, in the amount of \$166.00, to make the repairs and experienced an extraordinarily high water bill from WSSC. The Commission concludes that the Respondents are liable to the Complainants for the costs they incurred to make plumbing repairs (\$166.00) and one-half of that WSSC water bill (\$213.99).

5. The Complainants issued the Respondents a proper notice to vacate the Property on or before April 3, 1997.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders the following:

1. The immediate termination of the Lease between the Respondents and the Complainants, if it has not already terminated pursuant to the Complainants' notice to quit and vacate issued to the Respondents on March 4, 1997.

2. The Respondents must refund to the Complainants **\$5,919.99**, which sum represents:

a. the Complainants' entire security deposit (\$1,000.00), plus one year's accrued interest @ 4% (\$40.00),

b. the full refund of rent paid by the Complainants to the Respondents for the period January 1996 through March 1996, 3 months @ \$1,000.00 a month (\$3,000.00),

c. partial refund of rent paid by the Complainants to the Respondents for the period April 1996 through June 1996, 3 months @ \$500.00 a month (\$1,500.00),

d. reimbursement to the Complainants of one-half of the WSSC water bill (\$213.99) and,

e. reimbursement to the Complainants of the entire cost they incurred to make plumbing repairs (\$166.00).

3. The Complainants' claim for reimbursement of rent paid to William Wharton's mother, K.L. Wharton, at the rate of \$75.00 per week for 13 weeks (December 20, 1995 through March 31, 1996), is hereby denied.

4. Complainants' request for attorneys fees is hereby denied.

The foregoing was concurred in unanimously by Commissioners William Devany, Carol Papalazarus and Joan 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.

Greg Smith Chairperson

Commission on Landlord-Tenant Affairs