

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

In the matter of:	*	
	*	
Ben Peck	*	
	*	
Complainant	*	
	*	
V.	*	Case No. 32486
	*	
Holli Behrman	*	
	*	
Respondent	*	
	*	

Rental Facility: 10518 Weymouth Street, Apt. 102, Bethesda, MD 20814 (License # 63871)

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 26th day of September, 2011, found, determined, and ordered, as follows:

BACKGROUND

On April 21, 2011, Ben Peck ("Complainant"), former tenant at 10518 Weymouth Street, Apt. 102, Bethesda, MD ("Condominium"), 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 he alleged that his former landlord, Holli Behrman, owner of the Condominium ("Respondent"): (1) failed to refund any portion of his \$1,500.00 security deposit plus accrued interest within 45 days after the termination of his tenancy, in violation of Maryland Code (1954, 2003 Repl. Vol., 2007 Suppl.), Real Property Article, Section 8-203(e)(1) (“Real Property Article”); and, (2) failed to send him an itemized list of damages, together with a statement of the costs actually incurred to repair those damages, within the 45 days after the termination of his tenancy, in violation of Section 8-203 (g)(1) of the Real Property Article, and therefore, pursuant to Section 8-203(g)(2), the Respondent has forfeited the right to withhold any portion of his security deposit plus accrued interest.

The Complainant asserts that he did not damage the Condominium in excess of ordinary wear and tear during his tenancy, and therefore, the Respondent had no reasonable basis to withhold any portion of his security deposit plus accrued interest.

The Respondent contended that the Complainant damaged the Condominium in excess of ordinary wear and tear during his tenancy, and the costs she incurred to repair the damages exceeded the amount of the security deposit paid by the Complainant.

The Complainant is seeking an Order from the Commission for the Respondent to refund his entire \$1,500.00 security deposit plus interest, and a penalty of up to three times that amount based on the Respondent's unreasonable withholding of his entire security deposit plus interest.

After determining that the complaint was not susceptible to conciliation, the Department referred this case to the Commission for its review, and on July 12, 2011, the Commission voted to hold a public hearing on August 24, 2011. Due to a scheduling conflict, the Complainant requested the public hearing be continued. The public hearing was re-scheduled for September 20, 2011. The public hearing in the matter of Ben Peck v. Holli Behrman relative to Case No. 32486 was held on September 20, 2011.

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 the Complainant, Ben Peck, and the Respondent, Holli Behrman.

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, without objection, into evidence the following exhibit offered by the Complainant: (1) prices of products researched on the Internet for materials allegedly used by the Respondent to perform some of the repairs at the Condominium, identified as Complainant's Exhibit No.1.

FINDINGS OF FACT

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

1. On November 30, 2009, the Respondent and the Complainant signed a three month lease agreement ("Lease") for the rental of the Condominium, which commenced on December 22, 2009, and expired on March 31, 2010, for a monthly rent of \$1,500.00.
2. On November 30, 2009, the Complainant paid the Respondent a security deposit, in the amount of \$1,500.00, which amount is receipted in the Lease.
3. At the expiration of the lease term, the Complainant remained in the Condominium as tenant on a month to month basis until his vacate date.
4. The Commission finds that on June 29, 2010, the Respondent provided the Complainant with a Notice to Vacate, effective August 31, 2010.
5. The Commission finds credible the Respondent's and the Complainant's testimony that it was mutually agreed that the tenancy would terminate on September 3, 2010.
6. The Complainant vacated the Condominium on September 3, 2010, having paid rent in full through the month of August 2010.
7. The Commission finds that the Complainant is liable to the Respondent for three days of rent for the period September 1, 2010, through September 3, 2010, in the amount of \$150.00.

8. The Commission finds that there was not a joint final walkthrough inspection of the Condominium.

9. The Commission does not find credible the Respondent's testimony that there was evidence of damages in excess of ordinary wear and tear at the Condominium after the Complainant vacated.

10. The Commission finds that on November 8, 2010, 66 days after the Complainant vacated the Condominium, the Respondent sent to him a list of damages being claimed against his security deposit together with a statement of the cost actually incurred to repair that damage.

11. 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 his \$1,500.00 security deposit from the commencement of his tenancy, November 30, 2009, until the termination of his tenancy, September 3, 2010.

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. Pursuant to Section 8-203(g)(1) and (2) of the Real Property Article, "If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under subsection (f)(1) of this section together with a statement of the cost actually incurred"; and, "If the landlord fails to comply with this requirement, he forfeits the right to withhold any part of the security deposit for damages." The Commission concludes that the Respondent failed to send the Complainant within 45 days after the termination of his tenancy, a list of damages claimed against his security deposit. This failure constitutes a violation of Section 8-203 (g) (1) of the Real Property Article, and therefore, pursuant to Section 8-203 (g) (2), the Respondent has forfeited her right to withhold any portion of the Complainant's security deposit for damages.

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

3. Although the Commission concludes that the failure by the Respondent to refund any portion of the Complainant's security deposit was unreasonable and constitutes a violation of Section 8-203 (e)(4) of the Real Property Article, to award a penalty, as requested by the Complainant, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Landlord's conduct in wrongfully withholding all or part of the Complainant's security deposit, whether the Landlord acted in good faith, and any prior history of wrongful withholding of a security deposit. Based on the evidence, the Commission concludes that the Respondent's conduct does not rise to the level of bad faith or egregiousness necessary to award a penalty. Therefore, Complainant's request for such an award is denied.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondent must pay the Complainant **\$1,372.50**, which sum represents the Complainant's security deposit (\$1,500.00), plus accrued interest (\$22.50), minus three days of unpaid rent (\$150.00).

Commissioner Galia Steinbach, Commissioner Jan Patterson, and Commissioner Kenneth Lemberg, Panel Chairperson, unanimously concurred in the foregoing decision.

To comply with this Order, Respondent, Holli Behrman, 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 Ben Peck, in the amount of \$1,372.50.

The Respondent, Holli Behrman, 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. Pursuant to Section 29-49 of the County Code, should the Respondent choose to appeal the Commission's Order, she must post a bond with the Circuit Court in the amount of the award (\$1,372.50) if a stay of enforcement of this Decision and Order is sought.

Kenneth Lemberg, Panel Chairperson
Commission on Landlord-Tenant Affairs