

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

In the matter of:	*	
	*	
Becaye Traore and Magne Diop	*	
	*	
Complainants	*	
	*	
V.	*	Case No. 33041
	*	
James Mack	*	
	*	
Respondent	*	
	*	

Rental Facility: 1922 Flowering Tree Terrace, Silver Spring, MD 20902 (License # 58886)

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 25th day of May, 2012, found, determined, and ordered, as follows:

BACKGROUND

On January 12, 2012, Becaye Traore and Magne Diop ("Complainants"), former tenants at 1922 Flowering Tree Terrace, 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 they alleged that their former landlord, James Mack, owner of the Property (“Respondent”) through his management company, Allied Realty Corporation (“Agent”), assessed unjust charges against their security deposit after the termination of their tenancy in violation of Maryland Code (1954, 2003 Repl. Vol., 2007 Suppl.), Real Property Article, Section 8-203(e)(1) (“Real Property Article”).

The Complainants assert that they did not damage the Property in excess of ordinary wear and tear during their tenancy, and therefore, the Respondent had no reasonable basis to withhold any portion of their security deposit plus accrued interest.

The Respondent contends that the Complainants damaged the Property in excess of ordinary wear and tear during their tenancy, and that the amount withheld from the security deposit was for actual cost incurred to repair those damages.

The Complainants are seeking an Order from the Commission for the Respondent to refund their security deposit plus accrued interest, in the amount of \$1,961.00, and a penalty of up to three times that amount based on the Respondent's unreasonable withholding.

After determining that the complaint was not susceptible to conciliation, the Department referred this case to the Commission for its review, and on March 6, 2012, the Commission voted to hold a public hearing on May 15, 2012. The public hearing in the matter of Becaye Traore and Magne Diop v. James Mack relative to Case No. 33041 was held on May 15, 2012.

The record reflects that the Complainants 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, Becaye Traore, Pauline Tenjani (French interpreter), the Respondent James Mack; and his witness, Coey Bryant (contractor); Eric Hough and Richard English (Commission witnesses), representing Allied Realty Corporation.

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 exhibits offered by the Respondent: (1) Copy of final inspection report of the Property dated August 1, 2011, identified as Respondent's Exhibit No.1; and, (2) Four photographs showing damage to the Property dated August 10, 2011; identified as Respondent's Exhibit No. 2. The Commission also entered, without objection, into evidence a letter dated May 15, 2012, offered by Robert Hough, Commission witness, identified as Commission Exhibit No. 2.

The Commission kept the record open for seven calendar days, until May 22, 2012, so the Commission witness could submit a copy of the final inspection report relative to the condition of the Property before the Complainants moved-in. On May 21 2012, Eric Hough, Allied Realty Corporation submitted the documentation requested, which included a letter dated May 17, 2012, with several enclosures; which was marked as Commission's Exhibit No.3, and forwarded to all the parties. The record was closed on May 22, 2012.

FINDINGS OF FACT

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

1. On July 31, 2009, the Complainants and Respondent signed a one year lease agreement ("Lease") for the rental of the Property, which commenced on August 1, 2009, and expired on July 31, 2010, for a monthly rent of \$1,850.00. In that Lease Allied Realty Corporation was recognized as the management agent for the Property (Commission Exhibit No. 1 – Pages 4 through 13).

2. On or about July 31, 2009, the Complainants paid the Respondent a security deposit, in the amount of \$1,850.00; which amount is receipted in the Lease.

3. The Commission finds that on July 7, 2010, a one year lease extension was signed by the parties, for the period August 1, 2010, through July 31, 2011; with a monthly rent amount of \$1,900.00 (Commission Exhibit No. 1 – Page 16).

4. The Commission finds that on June 29, 2011, the Complainants advised the Respondent of their intention to vacate the Property by the end of their lease term-July 31, 2011 (Commission Exhibit No. 1 – Page 26).

5. The Commission finds that on July 8, 2011, the Agent, acknowledged receipt of the Complainants Notice to Vacate and advised the Complainants of instructions for vacating (Commission Exhibit No. 1 – Page 27 through 29).

6. The Commission finds credible Complainant Becaye Traore's testimony that he followed the instructions to vacate the Property as required by the Agent.

7. The Commission finds credible Complainant Becaye Traore's testimony that he requested to be present at a final walkthrough inspection, which was indicated on his letter dated July 15, 2011 (Commission Exhibit No. 1 – page 30).

8. The Commission finds that on July 31, 2011, the Complainants vacated the Property having paid rent in full through that date.

9. The Commission finds that on September 9, 2011, within 45 days of the termination of the Complainants' tenancy, the Agent sent the Complainants an itemized list of damages claimed against their security deposit, which included invoices but not receipts for actual cost incurred (Commission Exhibit No. 1 – Page 31).

10. The Commission finds that on February 2, 2012, Eric Hough, on behalf of the Agent, informed the Department that the only cost for damages determined and endorsed by the Agent was \$6.91 for the final WSSC bill (Commission Exhibit No. 1 – Page 77). The Complainants subsequently demonstrated that they have paid this amount. The Agent refunded the Complainants the amount of \$6.91 (Commission Exhibit No. 1 – Page 86 – Check No. 22577).

11. The Commission finds credible Eric Hough and Richard English's testimony that even though there was some damage done to the Property and some sort of odor coming from the carpet, such damage did not appear to be in excess of ordinary wear and tear.

12. The Commission finds credible Complainant Becaye Traore's testimony that he hired a contractor to professionally clean the carpet and to sweep the chimney as instructed by the Agent (Commission Exhibit No. 1 – Page 46).

13. The Commission finds credible the Respondent's testimony that there was some damage at the Property after the Complainants vacated. However, the Respondent did not provide sufficient evidence/documentation that those damages were in excess of ordinary wear and tear.

14. The Commission does not find credible the testimony of Coey Bryant that the damages in the Property were in excess of ordinary wear and tear. The Commission finds that the Respondent did not provide any probative evidence to support his contention that the work was performed and paid for.

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 the Respondent, through his Agent, did send a written list of damages to the Complainants within 45 days after their tenancy ended. However, the Respondent failed to demonstrate that he incurred cost to repair those damages. Therefore, a violation of Section 8-203 (g) (1) has occurred and a defective tenancy has been created.

2. The Commission concludes that, based on the testimony and evidence presented, although the Respondent sent an itemized list of damages within the time-frame mandated by law, the charges assessed against the Complainants' security deposit plus interest were for damages that were not in excess of ordinary wear and tear. Therefore, the Commission concludes that the charges assessed against the Complainants' security deposit plus interest are not permissible.

3. Although the Commission concludes that charges assessed against the Complainants' security deposit plus accrued interest (\$1,850.00 plus \$111.00) were unreasonable and constitute a violation of Section 8-203 (e)(4) of the Real Property Article, to award a penalty, as requested by the Complainants, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Respondent's conduct in wrongfully withholding all or part of the Complainants' security deposit, whether the Respondent 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, Complainants' 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 Complainants **\$1,954.09**, which sum represents the Complainants' security deposit (\$1,850.00), plus accrued interest (\$111.00), less the amount previously refunded to the Complainants (\$6.91).

Commissioner Kenneth Lemberg, Commissioner Nancy Cohen, and Commissioner Denise Hawkins, Panel Chairperson, unanimously concurred in the foregoing decision.

To comply with this Order, Respondent, James Mack, 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 Becaye Traore and Magne Diop, in the amount of \$1,954.09.

The Respondent, James Mack, 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, 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 Decision and Order, he must post a bond with the Circuit Court in the amount of the award (\$1,954.09) if a stay of enforcement of this Decision and Order is sought.

Denise Hawkins, Panel Chairperson
Commission on Landlord-Tenant Affairs