

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

In the matter of:	*	
	*	
Regan Sweeney	*	
	*	
Complainant	*	
	*	
V.	*	Case No. 33656
	*	
Melvin Eck	*	
	*	
Respondent	*	
	*	

Rental Facility: 6620 Hillandale Road, Chevy Chase, MD 20815 (License No. 2000)

CORRECTED 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 16th day of July 2013, found, determined, and ordered, as follows:

BACKGROUND

On January 25, 2013, Regan Sweeney ("Complainant"), former tenant at 6620 Hillandale Road, Chevy Chase, 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 he alleged that his former landlord Melvin Eck, owner of the Property (“Respondent”): (1) failed to return his security deposit interest 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 that damage, within the 45 days after the termination of his tenancy, in violation of § 8-203 (g)(1) of the Real Property Article.

The Complainant asserts that he received the Property in an unclean condition and in need of repair at the commencement of the tenancy. The Complainant further asserts that he did not damage the Property 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 contends that the Complainant damaged the Property in excess of ordinary wear and tear during his 8 year tenancy, and that he kept the security deposit interest to pay for the repair of those damages.

The Complainant is seeking an Order from the Commission for the Respondent to refund the accrued interest in the amount of \$960.00, 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 May 7, 2013, the Commission voted to hold a public hearing on June 25, 2013. On June 18, 2013, via e-mail, the Respondent requested a deferment of the Public Hearing (Commission Exhibit No. 1, Page 84), until the District Court ruled on the same matter, since he filed a law suit against the Complainant. The Respondent's request for a continuance was denied (Commission Exhibit No. 1 – Page 85). On June 23, 2013, via e-mail, the Respondent advised the Commission that he would not be present at the public hearing since he was going to be out of the State on a business trip (Commission Exhibit No. 1 – Page 89). The public hearing in the matter of Regan Sweeney v. Melvin Eck, relative to Case No. 33656, was held on Jun 25, 2013.

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 Regan Sweeney, and, Office of Landlord-Tenant Affairs Investigator Susana Capobianco. The Respondent Melvin Eck, failed to appear at the hearing.

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, without objection, the following exhibits offered by the Complainant: (1) copy of an e-mail dated 7/27/04, sent to the Respondent by the Complainant requesting a rent adjustment due to the condition of the Property at time of move-in, identified as Complainant's Exhibit No.1; (2) copy of an e-mail dated 7/12/04, sent from the Respondent to the Complainant acknowledging that he will have a contractor fix the problems at the Property, identified as Complainant's Exhibit No. 2; (3) copy of an undated list of deficiencies found at the Property at time of move-in, identified as Complainant's Exhibit No. 3; (4) list of expenses incurred by the Complainant to attend the public hearing, totaling \$ 576.42; identified as Complainant's Exhibit No. 4; (5) copy of an e-mail dated 8/12/12, from the Respondent to the Complainant regarding painting the Property before Complainant moved-out, identified as Complainant's Exhibit No. 5; (6) copy of an e-mail dated 6/19/13, sent by Joanna Pedas, current tenant's daughter, relative to carpet replacement at the Property, identified as Complainant's Exhibit No.6; (7) copy of an e-mail dated 8/26/12, sent from the Respondent to the Complainant relative to the Complainant's rental reference; identified as Complainant's Exhibit No. 7; and, (8) copy of a Facebook posting relative to the Respondent's social activity on or about March 12, 2013; identified as Complainant's Exhibit No. 8.

FINDINGS OF FACT

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

1. On June 17, 2004, the Respondent, the Complainant and Ms. Megan Daum, signed a two year lease agreement (“Lease”) for the rental of the Property, which commenced on July 1, 2004, and expired on August 31, 2006, for a monthly rent of \$2,000.00 (Commission Exhibit No. 1 – Pages 5 through 9).

2. On or about June 17, 2004, the Complainant paid the Respondent a security deposit, in the amount of \$2,000.00; which amount is receipted in the Lease (Commission’s Exhibit No. 1 – Page 5).

3. The Commission finds credible the Complainant’s testimony that at the beginning of the tenancy he also paid \$2,000.00 towards the last month’s rent in three monthly installments (payments made on 6/30/04, on 7/30/04 and on 8/31/04). This is also considered part of the security deposit.

4. The Commission finds that the Lease signed by the parties does not contain any of the disclosures required by Section 8-203, “Security Deposits”, or Section 8-203.1, “Security Deposit Receipt”, of the Real Property Article (Commission’s Exhibit No. 1 – Page 5).

5. The Lease reads as follows (Commission’s Exhibit No. 1 – Page 5):

“...2. **Security Deposit.** On execution of this lease, Lessee deposits with Lessor Two thousand Dollars (\$2,000.00), receipt of which is acknowledged by Lessor, as security for the faithful performance by Lessee of the terms hereof, to be returned to Lessee, without interest, on the full and faithful performance by him of the provisions hereof...”

6. The Commission finds credible the Complainant’s testimony that at the expiration of the lease term, August 31, 2006, Ms. Daum moved-out of the Property; the tenancy became a month to month tenancy, and the Complainant took full responsibility for the monthly rental payments.

7. By a letter dated July 30, 2012, the Complainant advised the Respondent of his intentions to vacate the Property by September 30, 2012 (Commission’s Exhibit No. 1 – Page 16).

8. By the same July 30, 2012, correspondence, the Complainant provided the Respondent with his forwarding address: 97 Grant Street, Portland, ME 04101 (Commission’s Exhibit No. 1 – Page 16).

9. The Commission finds credible the Complainant’s testimony that on September 28, 2012, he vacated the Property, having paid rent in full through September 30, 2012. The \$2,000.00 paid at the commencement of the tenancy as the last month’s rent was applied for this payment.

10. The Commission finds credible the Complainant’s testimony that a walkthrough inspection of the Property took place on September 28, 2012, with the Respondent, the new tenant and himself and that at the time no major damages in excess of ordinary wear and tear were pointed out by the Respondent. There is no final inspection report on file.

11. On or about October 11, 2012, the Respondent refunded the Complainant \$2,000.00 - Reference No. 0078266102 (Commission’s Exhibit No. 1 – Page 15).

12 On October 26, 2012, the Respondent sent the Complainant an e-mail, claiming damages done to the Property. This e-mail did not enclose an itemized list of damages. (Commission’s Exhibit No. 1 – Page 20).

13. The Commission finds credible the Complainant’s testimony that the Property was not damaged in excess of normal wear and tear, during his eight year tenancy. Furthermore, the Respondent did not provide the Commission with sufficient probative evidence of the damages claimed, and/or receipts/invoices for actual cost incurred to repair the alleged damages.

14. The Commission finds credible the Complainant’s testimony that he never received a copy of the letter provided to the Department by the Respondent, dated October 3, 2012, which stated in pertinent part the following (Commission’s Exhibit No. 1 – Page 11):

“..Since you have moved to Maine, I have sent you a check in the amount of \$2,000.00; which will include all interest required by law, and a holdback of damages, far less than that which I will have to expend to make the house fit for the new tenant...”

15. The Commissions finds credible the Complainant’s testimony that he did not receive a letter with an itemized list of damages after he moved-out from the Property.

16. The Commission finds credible the Complainant’s testimony that the Respondent did not abide by the applicable laws regarding landlord-tenant relations with his previous tenant; and that there was a suit filed in the Montgomery County Circuit Court, *Case No. 27162V – Joseph Stechshulte v. Melvin Eck*, relative to a breach of lease (Commission Exhibit No. 1 – Page 3)

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 8-203 (a)(3) of the Real Property Article defines security deposit as: “ any payment of money, including payment of the last month’s rent in advance of the time it is due, given to a landlord by a tenant in order to protect the landlord against nonpayment of rent, damage due to breach of lease, or damage to the leased premises, common areas, major appliances, and furnishings”.

The Commission concludes that the Complainant’s security deposit was \$4,000.00 (\$2,000.00 security deposit plus last month’s rent, \$2,000.00). Based on the length of the tenancy – July 1, 2004 through September 30, 2012 (8 years and three months), the amount of accrued interest at this rental Property is \$960.00.

2. Pursuant to Section 8-203(g)(1) and (2) of the Real Property Article, “[i]f 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, “[i]f 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 e-mail sent to the Complainant by the Respondent, which did not include any statement of the cost actually incurred, is not in compliance with the law and 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) of the Real Property Article, the Respondent has forfeited his right to withhold any portion of the Complainant's security deposit for damages.

3. Pursuant to Section 8-203 (e) (1) of the Real Property Article, "[w]ithin 45 days after the end of the tenancy, the landlord shall return the security deposit to the tenant together with simple interest which has accrued in the amount of 3 percent per annum, less any damages rightfully withheld".

Pursuant to Section 8-203 (j) of the Real Property Article, "[n]o provision of this section may be waived in any lease."

Furthermore, pursuant to Section 8-208 (g)(2) of the Real Property Article, "[i]f the landlord includes in any lease a provision prohibited by this section or made unenforceable by § 8-105 or § 8-203 of this title, at any time subsequent to July 1, 1975, and tenders a lease containing such a provision or attempts to enforce or makes known to the tenant an intent to enforce any such provision, the tenant may recover any actual damages incurred as a reason thereof, including reasonable attorney's fees."

The Commission concludes that the Respondent's notation in Paragraph 2 of the Lease to "forego interest on the security deposit" is in violation of Section 8-203 (j) and Section 8-208 (g) (2) of the Real Property Article and is unenforceable.

4. The Commission concludes that the Respondent's failure to pay the Complainant any interest which had accrued on his security deposit constitutes a violation of Section 8-203 (e) (1) and Section 8-208 (g) (2) of the Real Property Article, and has created a defective tenancy.

5. The Commission concludes that the Respondent's failure to refund the Complainant's security deposit interest was unreasonable and constituted a violation of Section 8-203 (e)(4) of the Real Property Article. To award a penalty, 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 the Complainant's security deposit plus interest and whether or not the Respondent acted in bad faith or has a prior history of wrongful withholding of a security deposit. According to the Department's Licensing records, the Respondent has been a Landlord in Montgomery County for over 20 years. While there is no history of the Respondent appearing before the Commission, as an experienced landlord, it is incumbent upon him to know the law and information is readily available in this regard. The Commission concludes that the withholding of \$960.00 of accrued interest when there was: 1) no proof of damages beyond normal wear and tear caused to the Property by the Complainant; 2) no unpaid rent; and, 3) no evidence of damage due to breach of lease; was willful, unreasonable and egregious, violated Section 8-203 (f)(4) of the Real Property Article, and caused a defective tenancy. Therefore, the request for treble damages as a penalty, is hereby granted.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondent must pay the Complainant **\$2,880.00** which sum represents the Complainant's security deposit interest accumulated during his tenancy (\$960.00), and trebled damages for the unreasonable withheld amount (\$960.00 x 3).

Commissioner Charles Marschke, Commissioner Beverly Flanagan, and Commissioner Galia Steinbach, Panel Chairperson, unanimously concurred in the foregoing decision.

To comply with this Order, Respondent, Melvin Eck, 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 Regan Sweeney [1], in the amount of \$2,880.00.

The Respondent, Melvin Eck, 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 Respondents have 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 Respondents choose to appeal the Commission's Order, they must post a bond with the Circuit Court in the amount of the award (\$2,880.00) if a stay of enforcement of this Decision and Order is sought.

Galia Steinbach, Panel Chairperson
Commission on Landlord-Tenant Affairs

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[1] The original Decision and Order incorrectly indicated that the check which the Respondent has been ordered to submit to the Office of Landlord-Tenant Affairs must be made payable to Dorothy Pitts. Accordingly, the Decision and Order has been corrected to indicate that the check must be made to Regan Sweeney.