

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

In the matter of:

Stephanie Friedman
Complainant

V.

Ashgar Minai
Respondent

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Case No. 33953

Single Family: 11725 Greenlane Drive, Potomac, Maryland (Rental Facility License No. 45841)

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 17th day of December, 2013, found, determined, and ordered, as follows:

BACKGROUND

On June 26, 2013, Stephanie Friedman (“Complainant”), former tenant at 11725 Greenlane Drive, Potomac, Maryland 20854 (“Property”), a licensed single-family rental facility 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 she alleged that Ashgar Minai (“Respondent”), owner of the Property: (1) failed to refund any portion of her \$2,400.00 security deposit plus accrued interest within the 45 days after the termination of her tenancy, in violation of § 8-203(e)(1) of the Real Property Article, Annotated Code of Maryland, 1999, as amended (“Real Property Article”); and (2) constructively evicted her by denying full and exclusive access to the Property for the balance of the notice period, in violation of Section 29-32(c) of Montgomery County Code (“County Code”). The Complainant is seeking the return of her \$2,400.00 Security Deposit (“Deposit”) plus accrued interest of \$72.00, reimbursement of overpaid rent of \$696.77 for the 9-day period during which exclusive access was denied, and a penalty of up to threefold the amount of the Deposit that was unreasonably withheld.

The Respondent asserts that: (1) the Complainant did not properly terminate her tenancy; (2) the Complainant communicated that she had vacated the Property on January 23, 2013, prior to the end of the notice period which would have been January 31, 2013; and (3) the Complainant’s security deposit plus accrued interest was applied to the penalty the Respondent suffered by terminating his own lease early in order to reoccupy the Property as the two parties agreed.

After determining that the complaint was not susceptible to conciliation, the Department duly referred this case to the Commission for its review, and on October 1, 2013, the Commission voted to hold a public hearing on November 12, 2013. On October 29, 2013 the Commission received a request

for a continuance from the Complainant. The Commission granted this request and the hearing was continued to November 25, 2013. The public hearing in the matter of *Stephanie Friedman v. Ashgar Minai* relative to Case No. 33953 was held on November 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: Complainant, Stephanie Friedman; the Commission's witness, Office of Landlord-Tenant Affairs Investigator Leslee Clerkley; Respondent, Ashgar Minai; and the Respondent's witnesses, Karla Minai and Ray Minai.

Without objection, the Commission entered into the record of the hearing the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Commission also entered into evidence, without objection, the following exhibit offered by the Respondent: Documentation of repairs to the Property (including a summary of the same, estimates for work and pictures), identified as Respondent's Exhibit No. 1 (8 pages and 2 3x5 photographs). The hearing record was closed on November 25, 2013.

FINDINGS OF FACT

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

1. On or about October 27, 2011, the Respondent and the Complainant signed a 2-year lease agreement ("Lease") for the rental of the Property, which commenced on November 4, 2011, and was to terminate on October 31, 2013, at a monthly rental rate of \$2,400.00 (Commission Exhibit #1, Page 2).
2. On or about October 27, 2011, the Complainant paid the Respondent a Deposit in the amount of \$2,400.00, which amount is receipted in paragraph #5 of the Lease (Commission Exhibit #1, Page 3).
3. On or about December 28, 2012, the Complainant paid the Respondent \$2,400.00 for January 2013 rent (Commission Exhibit #1, Page 20).
4. The Commission finds that on January 7, 2013, the Complainant sent the Respondent an email stating that she would be vacating the residence before the end of January 2013, but provided no specific vacate date. In this email the Complainant also advised the Respondent of her forwarding address and requested that her Deposit be sent to that address (Commission Exhibit #1, Page 18).
5. The Commission finds that the Complainant's email of January 7, 2013, does not serve as a proper notice to vacate, inasmuch as no specific date is provided in the email by which the Complainant would vacate.
6. The Commission finds credible the Respondent's testimony that he took possession of the property on January 23, 2013.
7. The Commission finds that there is no probative evidence that the Complainant and Respondent agreed that the tenancy would terminate on January 23, 2013.
8. The Commission finds that the Respondent's repossession of the Property deprived the Complainant of her use and enjoyment of the premises and effectively terminated her tenancy as of January 23, 2013. As the Complainant only retained possession of the Property from January 1,

through January 22, 2013, her rent responsibility for January 2013 is limited to \$1,703.23, \$696.77 less than her rent payment of \$2,400.00.

9. The Commission finds that the Complainant's Deposit accrued interest in the amount of \$72.00 through January 22, 2013, which was not paid to the Complainant pursuant to Section 8-203 (e) (1) of the Real Property Article.

10. The Commission finds that there is no probative evidence of the Respondent's claim that the Complainant agreed to forego the return of her Deposit as reimbursement of the penalty the Respondent suffered by terminating his own lease early in order to reoccupy the unit.

11. The Commission finds that, to date, the Respondent has not sent an itemized list of damages along with incurred costs to the Complainant at her last known address.

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 that:

1. Pursuant to Section 29-32(c) of the County Code, "A landlord must not actually or constructively evict or attempt to evict a tenant from, or deny a tenant access to, the dwelling unit occupied by the tenant without following the judicial process authorized in state law to obtain possession of the dwelling unit" (underlined for emphasis). Pursuant to Section 22b of the Lease (Commission Exhibit #1, Page 8), "The Landlord must not actually or constructively evict or attempt to evict a Tenant from, or deny a tenant access to, the dwelling unit occupied by the Tenant without following the judicial process authorized in state law to obtain possession of the dwelling unit." The Commission concludes that the Complainant and Respondent had no agreement that the Respondent would take possession of the Property prior to January 31, 2013, the date through which the Complainant's rent was paid. Therefore, the Respondent's action of taking possession of the unit on January 23, 2013, terminated the Complainant's rent responsibility and the Complainant is due the return of any prepaid rent for the period of time she was not allowed exclusive access to the Property.

2. 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 the Complainant's tenancy (by March 9, 2013), a list of damages claimed against her security deposit for actual cost incurred to repair those damages, which constitutes a violation of Section 8-203 (g) (1) of the Real Property Article. Consequently, pursuant to Section 8-203 (g) (2), the Respondent has forfeited his right to withhold any portion of the Complainant's security deposit for damages.

3. The Commission concludes that the Respondent's failure to handle and dispose of the Complainant's security deposit in accordance with the requirements of Section 8-203, "Security Deposits," of the Real Property Article, and Paragraph 5, "Security Deposit," of the Lease (Commission Exhibit #1, Page 3), has caused a defective tenancy.

4. 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 degree of egregiousness of the Respondent's

conduct in wrongfully withholding the Complainant's security deposit and whether or not the Respondent acted in bad faith or has a prior history of wrongful withholding of a security deposit. The Commission concludes that the Respondent's constructive eviction of the Complainant and failure to provide an itemized list of damages to the Complainant's last known address as required under Section 8-203 (e)(4) of the Real Property Article along with the Respondent's failure to refund any portion of the Complainant's \$2,400.00 security deposit plus accrued interest of \$72.00 was willful, unreasonable, and caused a defective tenancy. However, based on the evidence, the Commission concludes that the Respondent's conduct does not rise to the level of bad faith and egregiousness necessary to award a penalty. Therefore, the 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 **\$3,168.77**, which sum represents the Complainant's security deposit (\$2,400.00), plus accrued interest (\$72.00), and overpaid rent (\$696.77).

To comply with this Order, Respondent, Ashgar Minai, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within thirty (30) calendar days from the date of this Decision and Order, a check or money order, made payable Stephanie Friedman, in the amount of **\$3,168.77**.

The Respondent, Ashgar Minai, is hereby notified that Section 29-48 of the County Code provides that failure to comply with this Decision and Order is a Class A violation punishable by a \$500.00 civil fine for each offense as set forth in Section 1-19 of the County Code. Each day that a violation continues is a separate offense. Therefore, the 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 from 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.

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

Any party aggrieved by this action of the Commission may file an administrative appeal in 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 judicial review of administrative agency decisions. Also, in accordance with 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, **\$3,168.77**, if a stay of enforcement of this Decision and Order is sought.

Galia Steinbach, Panel Chairperson
Commission on Landlord-Tenant Affairs