

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

In the matter of:	*	
	*	
Timothy Joyce	*	
	*	
Complainant	*	
	*	
V.	*	Case No. 34109
	*	
Craig Lenkin, and	*	
Lenkin Management Company, LLC.	*	
	*	
Respondent	*	
	*	

Rental Facility: 2100 Hildarose Drive, Apt. 2, Silver Spring, MD (License #17303)

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 7th day of March 2014, found, determined, and ordered, as follows:

BACKGROUND

On October 8, 2013, Timothy Joyce ("Complainant"), former tenant at 2100 Hildarose Drive, Apt. 2, Silver Spring, MD ("Apartment"), 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, Craig Lenkin, and Lenkin Management Company, LLC, owner of the Apartment (“Respondent”): (1) failed to refund his security deposit plus accrued interest after the termination of his tenancy, in violation of Section 8-203(e)(1) in the Real Property Article of the Maryland Code (“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 Section 8-203 (g)(1) of the Real Property Article.

The Complainant 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 did not provide him with a proper Notice to Vacate the Apartment, and that he suffered damages, which justified the withholding of the Complainant's security deposit plus interest. Furthermore, the Respondent asserts that the Complainant owes him the amount of \$4,491.67.

The Complainant is seeking an Order from the Commission for the Respondent to refund his security deposit (\$675.00) plus accrued interest (\$307.13), in the amount of \$982.13, 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 November 27, 2013, the Commission voted to hold a public hearing on February 25, 2014. The public hearing in the matter of Timothy Joyce v. Craig Lenkin and Lenkin Management Company, LLC relative to Case No. 34109, was held on February 25, 2014.

The record reflects that the Complainant and the Respondent were given proper notice of the hearing date and time. Present and sworn in the hearing and presenting evidence were the Complainant Timothy Joyce, his son, Bryan T. Joyce, the Respondent Craig Lenkin, and the Commission witness, Brian Starks.

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 exhibit offered by the Respondent: (1) copy of the list of damages mailed to the Complainant, dated December 30, 2013, together with US Post Office proof of delivery, identified as Respondent's Exhibit No.1.

FINDINGS OF FACT

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

1. The Commission finds that on September 9, 1999, Belvedere Limited Partnership, the Respondent's predecessor in interest, and the Complainant, signed a one year lease agreement ("Lease") for the rental of the Apartment, the term of which commenced on September 18, 1999 and expired on September 30, 2000, for a monthly rent of \$675.00 (Commission Exhibit No. 1 – Pages 3 through 6).
2. The Commission finds that on or about September 9, 1999, the Complainant paid the Respondent a security deposit, in the amount of \$675.00; which amount is receipted in the Lease (Commission Exhibit No. 1 – Page 3).
3. The Commission finds that at the expiration of the Lease term, the Complainant remained in the Apartment as a tenant on a month to month basis.

4. The Commission finds that by a letter dated May 30, 2013, the Complainant advised the Respondent that he was going to vacate the Apartment by July 31, 2013 (Commission Exhibit No. 1 – Page 11).

5. The Commission finds that the May 30, 2013, Notice to Vacate letter was postmarked June 3, 2013 (Commission Exhibit No. 1 – Page 10).

6. The Commission finds credible the Complainant's testimony that he mailed the Notice to Vacate together with his June 2013, rent payment, as instructed by the Resident Manager, Brian Stark. He also stated that he dropped the envelope in a mail-box near the place where he resided on Saturday, June 1, 2013.

7. The Commission finds that on July 21, 2013, the Complainant vacated the Property having paid rent in full through July 31, 2013.

8. The Commission finds credible the testimony of witness Brian Stark, that sometime in mid-August 2013, he went into the Apartment to verify that the gas and the water were cut-off and that the place was safe. The witness also stated that he did not conduct an inspection at the time, and that the Apartment was empty except that he noticed three pieces of furniture were left in the unit.

9. The Commission finds that the Complainant sent the Respondent a letter dated August 5, 2013, advising him of his forwarding address and also informing him that the keys for the unit were going to be returned that week (Commission Exhibit No. 1- Page 13).

10. The Commission finds credible the Complainant's testimony that he left several messages in the Respondent's voice-mail inquiring about the return of his security deposit, and that the Respondent did not respond to any of his messages.

11. The Commission finds credible the Respondent's testimony that he knew that the Complainant was gone, and was aware that the Apartment was vacant. The Commission does not find credible the Respondent's assertion that the fact that the Complainant left did not provide him with possession of the unit.

12. The Commission does not find credible the Respondent's testimony that he was not able to take possession of the unit because the keys were not returned until some time in mid-September 2013.

13. The Commission finds that the Respondent did not start mitigating his damages until after he supposedly received the keys for the Apartment, sometime in mid-September 2013. The Respondent did not provide any probative evidence of his efforts to mitigate his damages.

14. The Commission finds that a list of damages was mailed to the Complainant on December 30, 2013, 122 days after the Complainant vacated the Apartment (Respondent's Exhibit No. 1). This list shows that the Complainant has a balance due to the Respondent in the amount of \$4,491.67; and states the following:

“...Timothy Joyce
1805 Florin St.
Silver Spring, MD 20902

Dear former tenant:

A review of your security deposit account shows the following:

Original Deposit	\$675.00
Date Received:	9/18/99

PLUS:

1.5% simple interest for each full six-month Period you occupied the apartment (as required Under MD law) 45.5%	\$307.13
GROSS AMOUNT DUE:	\$982.13

LESS:

(1) Unpaid rent for the following months:

August 2013	\$1,255.00
September 2013	\$1,255.00
October 2013	\$1,255.00
November 2013	\$1,255.00
Late fees @ 5% August-November	\$ 251.00

Tenant left furniture in the apartment Cost of bulk trash pick-up	\$ 202.80
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Tenant painted walls in apartment Various colors-cost to restore to “apartment white”: - waived	N/C
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Damaged kitchen drawer Missing lite covers (3) Missing smoke detector (1) All blinds removed by tenant	N/C per landlord
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<u>TOTAL DEDUCTIONS:</u>	<u>\$5,473.80</u>
AMOUNT DUE TENANT:	

<u>AMOUNT DUE LANDLORD:</u>	<u>\$4,491.67</u>
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Sincerely,
Lenkin Management Co., LLC
Belvedere, LLLP...”

15. The Commission finds that Paragraph 23 (a) of the Lease (Commission Exhibit No. 1 – Page5) reads as follows:

SURRENDER OF PREMISES/MOVE-OUT INSPECTION

23 (a). Tenant will, upon termination of this Lease, surrender the premises and all personal property of Landlord therein in good and clean condition, ordinary wear and tear excepted. Tenant will leave the premises in broom-clean condition, free of trash and debris. However, Tenant will not paint marks, plaster holes, crevices or cracks, or attempt any repair of the premises without Landlord/Agent's prior written consent. If such cleaning, and removal of trash is not accomplished by the Tenant, or if the premises are not left in good and clean condition, then any action deemed necessary by the Landlord/Agent to accomplish same will be taken by the Landlord/Agent at the Tenant's expense. ***Upon vacating the premises, Tenant must deliver all keys to the Landlord/Agent within twenty-four (24) hours after vacating. Failure to comply will be cause to charge Tenant for changing locks.*** (Emphasis added).

16. The Commission finds that neither the Complainant nor the Respondent provided sufficient probative evidence regarding the date that the apartment keys were returned to the Respondent by the Complainant.

17. The Commission finds that the Complainant's tenancy ended July 31, 2013, and his rent payment obligation ceased on that day; consequently, the Complainant does not owe the Respondent rent for the months of August, September, October and November 2013 or any late fees.

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. Based on a Decision and Order issued by COLTA, Case No. 24538, *Nadler v. Hyder*, and the ruling by the Maryland Court of Special Appeals in *Arthur Hyder, et. al. v. Montgomery County, Maryland, et. al.*, 160 Md. App. 482 (2004), where the rent payment is due on first calendar day of the month, a Notice to Vacate delivered on the first business day of the month satisfies a lease requirement that the tenant provide written notice to the landlord not later than a certain time period prior to the rent due date, as specified in the lease. Those aforementioned decisions rely on the so-called "next business day" rule, which is articulated under Maryland Rule 1-203 (b) as follows:

Computation of time before a day, act, or event. In determining the latest day for performance of an act which is required by these rules, by rule or order of court, or by any applicable statute, to be performed a prescribed number of days before a certain day, act, or event, all days prior thereto, including intervening

Saturdays, Sundays, and holidays, are counted in the number of days so prescribed. The latest day is included in the determination unless it is a Saturday, Sunday, or holiday, in which event the latest day is the first preceding day which is not a Saturday, Sunday, or holiday.

In this instance, the lease required the tenant to give written notice of his intention to vacate the Apartment two months prior to the rent due date. The Commission concludes that the Notice to Vacate, dated May 30, 2013, was timely mailed by the Complainant to the Respondent, as it was dropped in a mailbox on Saturday, June 1, 2013, and delivered by the U.S. Postal Service on the first business day of the month, which was Monday, June 3, 2013.

2. The Commission concludes that after the Complainant's failure to deliver the keys within 24 hours after vacating, as required under Paragraph 23(a) of the Lease, the Respondent deliberately failed to exercise his rights under that provision with regards to taking possession of the Apartment by changing the locks and charging the cost of doing so to the Complainant.

3. The Commission concludes that the Complainant's tenancy ended July 31, 2013. 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 an itemized list of damages to the Complainant within 45 days after the termination of his tenancy, which constitutes a violation of Section 8-203(g)(1) of the Real Property Article. Consequently, the Respondent has forfeited his right to withhold any portion of the Complainant's security deposit for damages under Section 8-203(g)(2).

4. The Commission concludes that the failure by the Respondent to refund the Complainant's security deposit plus accrued interest 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 rise to the level of bad faith or egregiousness necessary to award a penalty, based on his failure to take possession of a property he knew to be vacant and failure to mitigate his damages, and by the Respondent's own testimony that he has been a landlord in Montgomery County for over 30 years and knows his obligations under the law. Therefore, the Commission awards a penalty of one time the unreasonably withheld amount.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondent must pay the Complainant **\$1,964.26** which sum represents the Complainant's

security deposit (\$675.00), plus accrued interest (\$307.13), and, a one fold penalty of the amount unreasonably withheld (\$982.13), pursuant to §8-203 (f) (4) of the Real Property Article.

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

To comply with this Order, Respondent, Craig Lenkin and Lenkin Management Company, LLC, 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 Timothy Joyce, in the amount of \$1,964.26.

The Respondent, Craig Lenkin and Lenkin Management Company, LLC, 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 Respondent choose to appeal the Commission's Order, he must post a bond with the Circuit Court in the amount of the award (\$1,964.26) if a stay of enforcement of this Decision and Order is sought.

Galia Steinbach, Panel Chairperson
Commission on Landlord-Tenant Affairs