



HOUSING BOARD OF REVIEW

City of Burlington

149 Church Street Room 11
Burlington, Vermont 05401
(802) 865-7122

**HOUSING BOARD OF REVIEW
CITY OF BURLINGTON**

NOTICE OF DECISION

Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

Please note that a person aggrieved by a decision of the Housing Board of Review is entitled to appeal to the Chittenden Superior Court. (See Housing Code Section 18-59 and Vermont Statutes Annotated, Title 24, Section 5006.) The court rules may require that such an appeal be commenced within thirty (30) days of the Board's Order.

Unless an appeal is taken, the Board's Order should be complied with before expiration of the thirty (30) day period.

DATED 11/26/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Shana Casava
Rick Bove for Pearl Street Housing Venture

**STATE OF VERMONT
CHITTENDEN COUNTY, SS.**

**In re: Request for Hearing of SHANA CASAVA)
Regarding Withholding of Security) CITY OF BURLINGTON
Deposit by PEARL STREET HOUSING) HOUSING BOARD OF REVIEW
VENTURE, LP for Rental Unit at 90)
Pearl Street, Apt. 409)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on November 4, 2019. Board Chair Josh O’Hara presided. Board Members Patrick Kearney, Patrick Murphy, Olivia Pena and Betsy McGavisk were also present. Petitioner Shana Casava was present and testified. Respondent Pearl Street Housing Venture, LP was represented at the hearing by Rick Bove who testified.

Board Member Betsy McGavisk disclosed prior to the hearing that she had a general conversation with petitioner unrelated to the case before this Board, but believed she could be fair and impartial in the matter before the Board. Neither party opposed her hearing the case.

Upon consideration of the evidence and the applicable law, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Richard Bove and Josephine Bove are the record owners of the property at 90 Pearl Street. Respondent Pearl Street Housing Venture, LP leases the property upon which stands the rental property identified as 90 Pearl Street, #409, in the City of Burlington which is the subject of these proceedings. Rick Bove manages the property.
2. Petitioner Shana Casava moved into the rental unit on or about August 1, 2018.
3. Champlain Office of Economic Opportunity (“CVOEO”) sent a check to Bove Brothers Realty¹ in the amount of \$1082.00 on August 1, 2018; according to a letter accompanying the check, it

¹ Rick Bove is president and duly authorized agent of Bove Brothers Realty Inc., general partner of Pearl Street Housing Venture, LP.

was to be used as a security deposit for petitioner. Petitioner claimed that \$600.00 of the deposit money was her money. The August 8 letter informed respondent that the deposit was being paid through federal or state grant funding and advised them: “[w]hen the tenant leaves the unit, please return this letter, along with the deposit (minus any allowable deductions) to our office....”

4. Petitioner vacated the apartment on June 30, 2019.

5. On July 8, 2019, Deb McCaffrey (another property manager) sent a letter to petitioner at her last known-address (the address of the rental unit in question) informing her that the deposit was being returned to CVOEO since it was paid by them. Petitioner did not receive the letter.

6. Interest was not credited to the security deposit.

CONCLUSIONS OF LAW

7. The City of Burlington’s security deposit ordinance, Minimum Housing Code Sec. 18-120, took effect April 10, 1986 and governs any rental arrangements for dwelling units in the City of Burlington entered into or renewed after that date.

8. The State of Vermont’s Landlord and Tenant Act, now codified at 9 V.S.A. Sec. 4451-68, applies to rental agreements for residential property entered into, extended or renewed on or after July 1, 1986. Its terms are to “be implied in all rental agreements” to which it is applicable. 9 V.S.A. Sec. 4453.

9. Under the city ordinance, as well as state law (the terms of which must be implied in the parties’ rental agreement), a landlord must return the security deposit to a tenant within 14 days from the date on which the tenant vacated or abandoned the dwelling unit, with a written statement itemizing any deductions. City ordinance also provides that the written statement must inform the tenant of the opportunity to request a hearing before the Burlington Housing Board of Review within 30 days of receipt of the landlord’s written statement. Minimum Housing Code Sec. 18-120(c). The statement and any payment must be hand-delivered or sent by mail. Minimum Housing Code Sec. 18-120(c). If a landlord fails to return the deposit with a statement within 14 days, the landlord forfeits the right to

withhold any portion of the security deposit. See, Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e).

10. The Vermont Supreme Court required the literal enforcement of these requirements in *In re Soon Kwon*, 189 Vt 598 (2011). In *Tepper v. Garcia*, No. 2015-150, 2015 WL 5793116 (VT Supreme Court, September 2015), the Court again held “strict compliance with the statute is required, and that ‘[w]e cannot allow an alternative method of giving notice’” (citing *In re Soon Kwon*, 2011 VT 26, ¶17). The plain language of the statute and ordinance requires return of the deposit to the tenant, not another entity; therefore, we will implement the ordinance according to its plain language. *State v. Berard*, 2019 VT 65, p. 12. The deposit must be returned to the tenant.

11. Petitioner is entitled to recover interest on the security deposit. Minimum Housing Code Sec. 18-120(c). The Housing Code requires that the security deposit be held by the owner in an interest-bearing account with an interest rate equivalent to a current Vermont bank passbook savings account. Sec. 18-120(a). The Board applies the interest rate currently found in most bank passbook savings accounts – 0.25% simple annual interest.

ORDER

Accordingly, it is hereby ORDERED:

12. Petitioner Shana Casava is entitled to recover from respondent Pearl Street Housing Venture the following amounts:

a) \$1082.00 of the principal amount of the security deposit improperly withheld after July 14, 2019;

b) Interest in the amount of \$2.58 on the entire deposit for the period August 1, 2018 to July 14, 2019; and

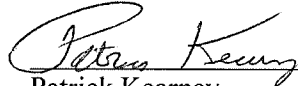
c) Additional interest of \$0.007 per day from July 15, 2019 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 26th day of November, 2019.

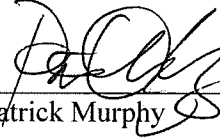
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Josh O'Hara



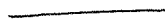
Patrick Kearney



Patrick Murphy



Olivia Pena



Betsy McGavisk