



HOUSING BOARD OF REVIEW

City of Burlington

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Burlington, Vermont 05401
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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 4/26/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Brendan Grahn
David Bauer c/o Stephanie Gilbert, Full Circle Property Management

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

**In re: Request for Hearing of BRENDAN)
 GRAHN Regarding Withholding of) CITY OF BURLINGTON
 Security Deposit by DAVID BAUER for) HOUSING BOARD OF REVIEW
 Rental Unit at 219 Plattsburgh Avenue)**

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 Brendan Grahn was present and testified. Respondent David Bauer was represented at the hearing by Stephanie Gilbert and Sarah Carbonneau both of whom testified. Also appearing and testifying was Emilio Fornatora.

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. Respondent David Bauer is the owner of a rental unit, 219 Plattsburgh Avenue, in the City of Burlington which is the subject of these proceedings. Stephanie Gilbert and Sarah Carbonneau from Full Circle Property Management manage the property.
2. Petitioner Brendan Grahn and Emilio Fornatora, Kaitlyn Beers and Konner Sherman moved into the rental unit with a written lease which ran from August 1, 2018 to July 27, 2019. Petitioner and his roommates were jointly and severally liable under the lease. Petitioner represented the interests of all the tenants at the hearing. Monthly rent was \$2300.00.
3. Petitioner and his roommates paid a security deposit of \$2300.00 to respondent; they were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. The parties disputed the move-out date. Per the terms of the lease, the tenancy ended at noon on July 27, 2019. Full Circle Property Management sent petitioner and his roommates a letter on July 9, 2019 reminding them that the lease expired on July 27. Petitioner testified they were out of the unit on

July 27, 2019 and left the keys to the unit on the counter. Emilio Fornatora emailed Sarah Carbonneau on July 29, 2019 and told her they had moved out “last weekend” (ie, July 27). Mr. Fornatora also asked if any of the tenants needed to be present at the move out inspection and he asked how the deposit would be returned. In her reply sent on July 29, Ms. Carbonneau indicated they were headed over to the property to conduct a move out inspection and collect the keys that were left for them; she indicated the tenants did not need to be present. Ms. Carbonneau informed Mr. Fornatora that the security deposit transmittals are sent out within 14 days. When Ms. Carbonneau went to the property she noticed there was trash left outside which was overflowing and blowing all over the property.

5. On the morning of July 30, Sarah Carbonneau emailed Emilio Fornatora and informed him of the garbage situation; she told Mr. Fornatora if the trash wasn’t cleaned up, they would remove it and the charge would be deducted from the security deposit. Mr. Fornatora indicated the garbage would be cleaned up that day (July 30). Respondent’s security deposit transmittal form to the tenants indicates a move-out date of July 30, 2019. However, Sarah Carbonneau and Stephanie Gilbert testified they had possession of the unit on July 31, 2019 – the date they actually entered the unit.

6. The Board finds the move out date to be July 29, 2019. Regardless of whether or not the property manager gave the tenants the opportunity to clean up the outside trash, Emilio Fornatora’s email of July 29 was clear that the tenants had vacated the unit and the keys were inside it.

7. On August 13, 2019, the property manager put the notice of withholding to petitioner, Kaitlyn Beers and Konner Sherman in the mailbox outside the post office at 5:05 p.m., as indicated by a handwritten notation on the certified mail receipt. Emilio Fornatora did not want the notice mailed to him and asked to pick it up when it was ready. Mr. Fornatora picked up the notice on August 14, 2019. The statement of withholding itemized 2 deductions from the deposit: \$140 for 4 hours of cleaning and \$50 for disposing of food and other items left in the unit. Petitioner disputed the timeliness of the notice, as well as the deductions from the deposit.

8. Respondent returned \$2111.38 of the deposit to petitioner and his roommates with the notice mailed on August 13. Interest in the amount of \$1.38 was credited to the deposit.

9. Petitioner argued that the deposit was willfully withheld and requested double the amount wrongfully withheld. Petitioner believed the property manager sent the notice and deposit return late as a way of getting even with the tenants because they challenged the property manager's behavior during the tenancy and they cleaned up the trash after moving out, thereby avoiding a fine. The Board finds petitioner's arguments unconvincing.

CONCLUSIONS OF LAW

10. 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.

11. 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.

12. 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). The parties disputed the move out date and this Board found the vacate date to be July 29, 2019. Accordingly, respondent was required to mail or hand-deliver the statement to petitioner by August 12, 2019. The property manager put the notice of withholding in a mailbox after post office hours on

August 13, 2019. The Board concludes notice was not timely. Therefore, respondent forfeited the right to withhold any part of the deposit.

13. Petitioner argued that respondent willfully withheld the deposit. If the failure to return a security deposit is willful, the landlord shall be liable for double the amount wrongfully withheld. See, Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). The Board concludes there is no evidence that \$190.00 of the deposit was willfully withheld.

ORDER

Accordingly, it is hereby ORDERED:


14. Petitioner Brendan Grahn (as the representative of all the tenants) is entitled to recover from respondent David Bauer the following amounts:

a) \$190.00 of the principal amount of the security deposit improperly withheld after August 12, 2019; and

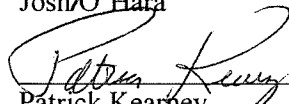
b) Additional interest of \$0.001 per day from August 13, 2019 until such date as the amount improperly withheld is returned to petitioner.

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

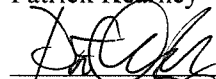
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HOUSING BOARD OF REVIEW



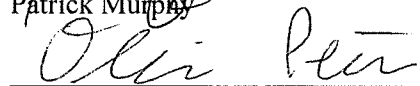
Josh O'Hara



Patrick Kearney



Patrick Murphy



Olivia Pena

Betsy McGavisk