



HOUSING BOARD OF REVIEW

City of Burlington

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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 7/16/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O’Hara
Board Vice Chair

cc: Hayley Jean
Douglas Lothrop & Craig Atwood

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

**In re: Request for Hearing of HAYLEY JEAN)
Regarding Withholding of Security) CITY OF BURLINGTON
Deposit by DOUGLAS LOTHROP and) HOUSING BOARD OF REVIEW
CRAIG ATWOOD for Rental Unit at 15)
Isham Street)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on July 1, 2019. Board Vice Chair Josh O’Hara presided. Board Members Patrick Kearney and Patrick Murphy were also present. Petitioner Hayley Jean was present and testified. Respondents Douglas Lothrop and Craig Atwood were represented at the hearing by Ginny Kolbenson who testified. Also appearing and testifying on behalf of petitioner were Isabel Maher, Shayna McMahan and Kayla Freischlag. Appearing and testifying on behalf of respondent were Robert Thibault and Mark Kolbenson.

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. Respondents Douglas Lothrop and Craig Atwood are the owners of a rental unit, 15 Isham Street, in the City of Burlington which is the subject of these proceedings. Ginny Kolbenson manages the property.
2. Petitioner Hayley Jean and her roommates moved into the rental unit with a written lease which ran from June 1, 2017 to May 18, 2018; petitioner and her roommates entered into a second lease which ran from June 1, 2018 to May 20, 2019. Monthly rent was \$3750.00.
3. Petitioner paid a security deposit of \$3750.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner and her roommates vacated the apartment on May 20, 2019.

5. Respondent sent petitioner a written statement itemizing deductions from the security deposit in accordance with ordinance requirements. Said statement itemized deductions totaling \$3166.76 and credits of \$6.00 for interest and \$266.00 for overpayment of rent by Kayla Freischlag. Respondent returned a total of \$855.24 to petitioner: \$266.00 for overpayment of rent and \$589.24 of the deposit. Petitioner received the statement and returned money on behalf of herself and her roommates – Isabel Maher, Shayna McMahon, Kayla Freischlag and Margaret Faraci. Petitioner disputed all the deductions except the two deductions for outstanding water bills.

6. The parties disputed whether or not all the keys to the unit were returned. Five keys were issued to the unit. Ginny Kolbenson stated that 1 of the 5 keys returned was not for the unit; she tried all the keys in the locks and one of them did not work. Petitioner stated that one of the keys did not work well: the key needed to be jiggled in the lock in order for it to work. Since Ms. Kolbenson did not know where the other key might be, she replaced the front and rear door locks. It is Ms. Kolbenson's practice to rotate door locks among rental units at times, but chose not to do that in this case.

7. Both parties testified with respect to cleaning charges which appeared as a \$1237.50 charge on the itemized statement. Petitioner was charged for 16.5 hours of cleaning at a rate of \$75/hour. Ginny Kolbenson and Robert Thibault cleaned the unit. According to Ginny Kolbenson, the bathrooms, the kitchen (including the appliances), the windows (including the sills), the baseboards and the heat registers all needed to be cleaned. Petitioner disputed the reasonableness of the hourly cleaning charge, as well as the time spent to clean the apartment. Petitioner and her roommates testified that they and their parents cleaned the unit, although they also stated that they felt somewhat rushed to move out, having graduated the day before they were required to move out. Petitioner also argued that some of the cleaning was part of normal wear and tear. Photos of the unit submitted into evidence indicate there was some cleaning beyond normal wear and tear that was required. The Board finds 8 hours of the cleaning is attributable to petitioner. In addition, the Board finds the rate charged for cleaning - \$75/hour – is unreasonable. The Board finds a reasonable rate to be \$40/hour.

8. Both parties testified with respect to damages which appeared as a \$1031.25 deduction on the itemized statement. The charge was for touching up walls, windowsills and door trim throughout the unit with paint, as well as painting the 2nd floor bathroom. The unit was painted just prior to petitioner moving in on June 1, 2017. Petitioner argued that any painting was part of normal wear and tear. The itemized statement notes that respondent deducted 75 minutes of time to account for normal wear and tear.

9. Both parties testified with respect to cleaning and fixing items that were in the basement which appeared as a \$625 deduction on the itemized list. The \$625 deduction was further itemized as: \$150 to clean up the basement, \$200 to fix a wall, \$75 to cover graffiti and \$200 to replace a storm window. The parties disputed the condition of the basement when petitioner moved into the unit. Petitioner testified the basement was a mess when they moved into the unit so they never went down there. Ginny Kolbenon testified the basement was clean when petitioners moved into the unit. The Board finds the damage in the basement was not attributable to petitioner with the exception of the storm window; the window was not broken when petitioner moved in, but broke sometime during her 2-year tenancy for which she is responsible.

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). Timely and proper notice was provided.

13. Based on the evidence, the Board concludes the deduction to replace the locks was not reasonable. Ginny Kolbenson testified it is her practice to rotate locks among units, but chose not to do that in this case. However, one of the keys returned did not work in the lock so it was reasonable to deduct the cost to make another key, a reasonable deduction for which is \$15.00.

14. Based on the evidence, the Board concludes the deduction for cleaning was not reasonable. Some of the cleaning done by respondent was part of normal wear and tear; in addition, the rate charged for cleaning was unreasonable. The Board concludes a reasonable deduction for cleaning beyond what was attributable to normal wear and tear is \$320.00 (8 hours at a rate of \$40/hour).

15. Based on the evidence, the Board concludes the deduction of \$1031.25 for touching up the walls throughout the unit with paint and for painting the 2nd floor bathroom was not reasonable. The work done was part of normal wear and tear.

16. Based on the evidence, the Board concludes a reasonable deduction for the charges related to the basement is \$200.00 for the storm window. The Board concludes the storm window was damaged during petitioner's tenancy so it was reasonable to withhold the cost to replace it. However, the other repairs were not attributable to petitioner.

ORDER

Accordingly, it is hereby ORDERED:


17. Petitioner Hayley Jean is entitled to recover from respondents Douglas Lothrop and Craig Atwood the following amounts:

a) \$2488.75 of the principal amount of the security deposit improperly withheld after June 3, 2019; and

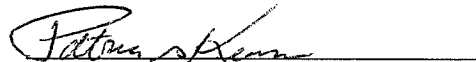
b) Additional interest of \$0.02 per day from June 4, 2019 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 16th day of July, 2019.

CITY OF BURLINGTON
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Josh O'Hara



Patrick Kearney



Patrick Murphy