



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 9/19/22

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk  
Betsy McGavisk  
Board Vice Chair

cc: Caroline Johansson & Will Manning  
CMF Ventures LLC

**CITY OF BURLINGTON, VERMONT  
HOUSING BOARD OF REVIEW**

**In re: Request for Hearing of CAROLINE            )**  
**JOHANSSON and WILL MANNING            )**  
**Regarding Withholding of Security        ) Security Deposit Appeal**  
**Deposit by CMF VENTURES, LLC for        )**  
**Rental Unit at 226 Pine St., Apt. 2        )**

**DECISION AND ORDER**

The above-named hearing came before the Housing Board of Review on August 22, 2022; the hearing was held remotely via Zoom. Board Vice Chair Betsy McGavisk presided. Board Members Evan Litwin, Olivia Taylor and Charlie Gliserman were also present. Petitioners Caroline Johansson and Will Manning were present and testified. Respondent CMF Ventures, LLC was represented at the hearing by Adam Winter who testified.

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 CMF Ventures, LLC is the owner of a rental unit, 226 Pine Street, Apt. 2, in the City of Burlington which is the subject of these proceedings. Respondent purchased the property in December 2020. Adam Winter manages the property for respondent.

2. Petitioners Caroline Johansson and Will Manning moved into the rental unit on June 1, 2020 under the previous owner of the property. On April 1, 2021, petitioners executed a new lease with respondent which ran from May 29, 2021 to May 29, 2022. Monthly rent was \$1675.00.

3. Petitioners paid a total of \$1850 in deposit money to respondent: a security deposit of \$1550 and a pet deposit of \$300.00. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.

4. Petitioners completed moving out of the apartment by the evening of June 1, 2022. The parties conducted a move-out inspection at 8 a.m. the morning of June 2 at which time the keys to the apartment were returned to respondent. The Board finds the move out date to be June 2, 2022.

5. On June 12, 2022, respondent returned \$797.03 of the deposit to petitioners along with an itemized list of deductions from the deposit in accordance with ordinance requirements. Interest in the amount of \$2.86 was credited to the deposit. Petitioners disputed the deductions.

6. Both parties testified with respect to the deduction of \$55.83 for one day of rent. Petitioners argued that respondent extended their move-out day to June 1 and they vacated the apartment around 4 p.m. on June 1; therefore, petitioners argued they were not responsible for rent. The lease expired at noon on May 29, 2022. However, respondent agreed to extend the move-out date to 2 p.m. on June 1, as requested by petitioners. Petitioners then requested to extend to 4 p.m. on June 1. Respondent was amenable to that extension, but told petitioners they would be charged for 4 days of rent and they would need to be out of the unit by noon on June 2. Petitioners declined that offer and said they would be out by 2 p.m. on June 1. Respondent went to the unit on June 1 at 2 p.m. and at 3:30 p.m. and petitioners were still moving out. Respondent indicated he would return at 8 a.m. on June 2 for the move-out inspection. Since petitioners were not out of the unit on time, respondent had to push back the date contractors were scheduled to be in the apartment.

7. Both parties testified with respect to the painting of the kitchen and living walls. Respondent deducted \$250 for each wall due to holes in them. The holes occurred as a result of petitioners hanging items on the walls. Petitioners patched the holes but did not sand the patches or paint over them. Petitioners argued that the holes were part of normal wear and tear, and petitioners repaired them. In addition, petitioners argued that the entire apartment should have been repainted after 2 years of living there. Respondent testified the damage was not part of normal wear and tear due to the size of the holes and pointed to the lease which prohibits making alterations to the apartment without prior written consent of the landlord. Respondent did not deduct the full cost to paint the wall – he deducted \$250 to repaint half of each wall. The total invoice for painting was \$1350.00 (\$1200.00 to paint 2 walls in the living room and 1 wall in the kitchen plus \$150.00 for materials). The invoice for painting does not indicate how long it took to paint the apartment and respondent was unsure how many painters worked in the unit.

8. Both parties testified with respect to the deduction of \$500.00 to repaint the “long” wall in the living room due to damage which occurred when petitioners moved their couch into the apartment. The previous landlord patched the damage but never painted the patch or the wall. The patch was quite large; due to its position on the “long” wall in the living room, it was necessary to paint the entire wall. Petitioners argued that since the previous landlord patched the area respondent should be responsible for completing the repair. Petitioners acknowledged the damage was caused by them.

### **Conclusions of Law**

9. 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.

10. 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.

11. 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 to the last-known address of the tenant, which may be the address of the rental unit if no forwarding address is provided. 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). Proper notice was provided.

12. Based on the evidence and testimony, the Board concludes the deduction for 1 day of rent was proper. Petitioners were supposed to be out of the apartment by 2 p.m. on June 1, 2022; they were not completely moved out until at least 4 p.m. on June 1. In addition, petitioners did not return the keys to the apartment until June 2 when the parties conducted a move-out inspection. Because the unit was not vacant by the agreed upon time, respondent had to push back contractors scheduled to be in the apartment on June 1.

13. Based on the evidence and testimony, the Board concludes a deduction for painting the “long” wall in the living room was proper as the damage was attributable to petitioners. The damage to the wall occurred when petitioners moved their couch into the apartment – the damage is attributable to them and is not part of normal wear and tear. However, the damage did not encompass the entire wall; thus, consistent with respondent’s deduction for painting half a wall for other painting, the Board concludes a reasonable deduction is \$250.00. Other painting done in the apartment was part of normal wear and tear.

**Order**

Accordingly, it is hereby ORDERED:

14. Petitioners Caroline Johansson and Will Manning are entitled to recover from respondent CMF Ventures LLC the following amounts:

- a) \$750.00 of the principal amount of the security deposit improperly withheld after June 16, 2022; and
- b) Additional interest of \$0.005 per day from June 17, 2022 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 19<sup>th</sup> day of September, 2022.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk  
Betsy McGavisk

/s/ Evan Litwin  
Evan Litwin

/s/ Charlie Gliserman  
Charlie Gliserman