



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 12/3/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Jill Smith & Johnathan Patterson
Offenhartz, Inc.

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

In re: 179 Elmwood Ave. #1)	
(Jill Smith & Johnathan Patterson,	}	Security Deposit Appeal
Tenants; Offenhartz, Inc., Landlord)	}	
	}	
	}	

DECISION AND ORDER

The above-captioned matter came before the Housing Board of Review (“the Board”) on November 4, 2019. Board Chair Joshua O’Hara presided. Board Members Patrick Kearney, Betsy McGavisk, Patrick Murphy, and Olivia Pena were also present. Jill Smith and Johnathan Patterson (“the Tenants”) were present and represented themselves. Steven Offenhartz was present and represented Offenhartz, Inc. (“the Landlord”). After hearing the testimony and considering the written submission of the Tenants and the Landlord, the Board makes the following factual findings and conclusions of law.

Factual Findings

1. The Landlord owns a rental unit, 179 Elmwood Avenue, #1, in the City of Burlington, which is the subject of these proceedings.
2. The Tenants moved into the rental unit on August 15, 2018. They paid the Landlord a security deposit of \$1,500.
3. The terms of the lease were conflicting. According to the written lease submitted by the Landlord at the November 4, 2019 hearing, the total rent due from the Tenants for the entirety of their tenancy was \$18,000. Ex. 2 at 1. However, the lease also includes a payment schedule and a term of the lease which could be construed to require a different payment amount. Under the payment schedule, Tenants were to pay Landlord \$750 upon move-in on August 15, 2018, and then \$1,500 on the first of the month until the end of the lease on July 24, 2019. Id.

4. If the payment schedule is credited, then the Tenants would have owed the Landlord \$750 on August 15, 2018, and then eleven payments of \$1,500 (due Sept. 1st, Oct. 1st, Nov. 1st, Dec. 1st, Jan. 1st, Feb. 1st, Mar. 1st, Apr. 1st, May 1st, Jun. 1st, and Jul. 1st). Ex. 2 at 1. Payments due from the Tenants would have totaled \$17,250 under this scenario.

5. In its security deposit transmittal, the Landlord contended the Tenants did not pay rent on July 1, 2019, and deducted \$1,500 from the security deposit. The transmittal also credited the Tenants with \$2 of interest, which the Board finds is an appropriate amount of interest to credit the Tenants. In support of the deduction, the Landlord included a document titled "Offenhartz Inc. Tenant Balance Detail - All Transactions." Ex. 5. The balance sheet includes monthly invoices for the rent due from Tenants, payments from the Tenants, and a credit after the term of the lease expired, which will be discussed in more detail below.

6. Tenants agreed they had not paid rent, but asserted that they did not owe the Landlord a full month's rent. They contended that an agent of the Landlord agreed they could prorate the July rent, and that they only owed \$1161.29 because they moved out on July 24, 2019. Mr. Offenhartz denied any person working for the Landlord had the authority to agree to a proration of rent.

7. The Board must reconcile the conflicting terms of the lease in order to decide whether the Tenants owed the Landlord rent. The Board finds that the Tenants owed the Landlord \$18,000. The lease clearly states that the "total rent for the lease period is \$18,000." Ex. 2 at 1. The language which follows in the lease merely sets up a payment schedule, but does not alter the basic terms of the lease.

8. The Board also finds that the Tenants owed the Landlord rent at the conclusion of the lease, but not in an amount suggested by either party. The Landlord's balance sheet shows that the Tenants made a \$750 payment on August 16, 2018, and then \$1,500 payments August 6th,

September 10th, October 24th, November 20th, January 8th, January 28th, February 22nd, March 27th, April 21st, May 28th, and July 5th. Ex. 5. Thus, according to the Landlord's balance sheet, the Tenants paid \$17,250 of rent during the lease. The Board therefore finds that the Tenants owed the Landlord \$750 in rent at the conclusion of the lease.

9. The Landlord's balance sheet also includes a credit of \$1,502, dated July 29, 2019. This is consistent with the amount of the Tenant's security deposit (with \$2 interest) as outlined on the Landlord's security deposit transmittal. Compare Ex. 1 with Ex. 5. The credit and the transmittal also bear the same date. The Board finds this credit entry in the balance sheet reflects Landlord's accounting for the security deposit.

10. The Landlord also charged the Tenants \$125 to shampoo the carpets in the unit. The Tenants testified that the carpets had an odor when they moved in and that they requested the Landlord remove the carpets, but settled for a carpet shampooing instead. That shampooing did not remove the odor. The Board finds that the need to shampoo the carpets was related to the normal wear and tear for this unit.

11. The Landlord also charged the Tenants \$150 for repairs to a storm door screen and a bedroom screen. At the hearing, Mr. Offenhartz acknowledge that the amount of the repairs should have been consistent with the lease: \$60 per screen, or \$120. The Tenants disputed that they caused the damage to the screens. However, the move-in checklist shows that the screens were undamaged when Tenants moved in. The Board concludes Tenants caused the damage and that a reasonable deduction was \$120.

12. The Landlord also charged the Tenants \$100 for cleaning of the rental unit's kitchen. The Tenants testified that the kitchen was clean when they moved out, but the photographs submitted

by the Landlord in Exhibit 11 contradict their testimony. The Board finds the cleaning was beyond normal wear and tear and that the deduction of \$100 to clean the kitchen was reasonable.

13. The Landlord also charged the Tenants \$120 to repair two broken refrigerator side bars. The Tenants acknowledged breaking one, but not the other. The Board finds that the damage was attributable to the Tenants, but finds that a reasonable deduction for the damage is \$50 per bar, or \$100.

14. The Landlord also charged the Tenants \$50.88 to replace a smoke detector. The smoke detector was present when the Tenants moved in, but was absent during a December, 2018 inspection. The Landlord billed the Tenants \$50.88 for the smoke detector on December 26, 2018. Ex. 5. The bill was never paid. Id. The Board finds this was a reasonable deduction from the security deposit.

Conclusions of Law

15. The City of Burlington's security deposit ordinance, Minimum Housing Code § 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.

16. The State of Vermont's Landlord and Tenant Act, now codified at 9 V.S.A. §§ 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. § 4453.

17. 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 § 18-120(c). The statement and any payment must be hand-delivered or sent by mail. Minimum Housing Code § 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 § 18-120(c) and 9 V.S.A. § 4461(e). Proper notice was provided.

18. Under the Minimum Housing Code, a landlord may deduct from the security deposit the actual cost to repair damage beyond normal wear and tear which is attributable to a tenant. § 18-120(c). A landlord may also deduct from the security deposit for the nonpayment of rent. Id.

19. Based upon its findings above, the Board concludes that the Landlord was entitled to make the following deductions: 1) \$750 for the nonpayment of rent; 2) \$120 to repair screens in the unit; 3) \$100 for the cleaning of the kitchen; 4) \$100 to repair the side bars in the refrigerator; and 5) \$50.88 to replace the smoke detector. The total of the allowable deductions is \$1,120.88.

Order

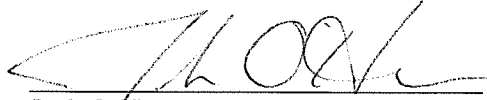
Accordingly, it is hereby ORDERED:

20. The Tenants Jill Smith and Johnathan Patterson are entitled to recover from the Landlord Offenhartz, Inc. the following amounts:

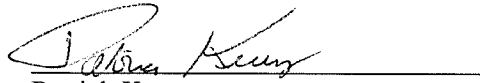
- a) \$381.12 of the security deposit improperly withheld after August 7, 2019; and
- b) Additional interest of \$0.003 per day from August 8, 2019 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 3rd day of December, 2019.

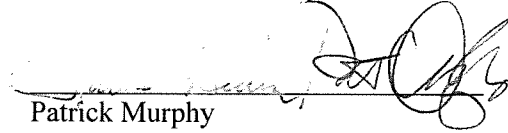
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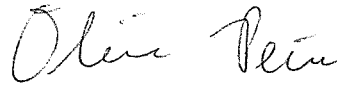
Josh O'Hara



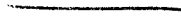
Patrick Kearney



Patrick Murphy



Olivia Pena



Betsy McGavisk