



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**

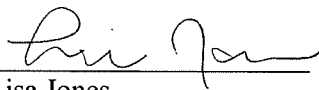
Enclosed is a copy of the “Findings of Fact, Conclusions of Law and Order” of the Burlington Housing Board of Review.

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 3/20/20

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
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Lisa Jones  
Board Clerk

cc: Megan Smith  
Jiangfeng Li for 36 Elmwood LLC

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

**In re: Request for Hearing of Megan Smith        )**  
**Regarding Withholding of Security        ) Security Deposit Appeal**  
**Deposit by 36 Elmwood LLC for Rental    )**  
**Unit at 36 Elmwood Ave                    )**

**DECISION AND ORDER**

The above-named hearing came before the Housing Board of Review on February 18, 2020. Board Chair Josh O’Hara presided. Board Members Patrick Kearney, Patrick Murphy and Betsy McGavisk were also present. Petitioner Megan Smith was present and testified. Respondent 36 Elmwood LLC was represented at the hearing by Jianfeng Li who testified. Also appearing and testifying were Benjamin Jacob and Kate Berdan.

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 36 Elmwood LLC is the owner of a rental unit, 36 Elmwood Avenue, in the City of Burlington which is the subject of these proceedings. Jianfeng Li manages the property.
2. Petitioner moved into the rental unit with a written lease which runs from September 1, 2019 to August 31, 2020. Monthly rent is \$3800.00. There are 5 other tenants in the house.
3. Petitioner and the other tenants paid a security deposit of \$3800.00 to respondent; petitioner’s share of the deposit was \$633.33. Petitioner and the other tenants are to receive back their security deposit at the end of the lease minus any amounts withheld for damages.

4. Petitioner stopped living in the apartment at the end of December, 2019.<sup>1</sup> However, petitioner continues to pay rent and still has keys to the apartment because she is looking for a subletter to take her place in the house. At the hearing, petitioner acknowledged she could still stay in the house if she chose. Nonetheless, petitioner has requested the return of her portion of the deposit since she has moved out of the house.

5. Jianfeng Li testified that the house was rented as a whole to petitioner and the other tenants, all of whom still live there. Ms. Li told petitioner that if she got a subletter and that person paid a portion of the security deposit as petitioner and the other tenants did, petitioner would get her portion of the deposit back.

#### **Conclusions of Law**

6. 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.

7. 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.

8. 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

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<sup>1</sup> Petitioner's request for hearing form indicated she moved out on December 18, 2019; however, text messages between the parties indicate petitioner was moving out on December 20, 2019.

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).

9. Petitioner and her roommates are joint tenants under the lease. The lease expires on August 31, 2020. Although petitioner has moved her belongings out of the apartment, she is still paying rent and she still has keys to the apartment. In addition, all the other tenants still live there. The Board concludes that respondent is not obligated to return the deposit since the lease has not expired, the other tenants are still living there and petitioner is paying rent and has keys to the apartment. When the lease expires petitioner and the other tenants will be entitled to the return of the security deposit, plus interest, unless there are damages to the apartment that are attributable to them.

**Order**

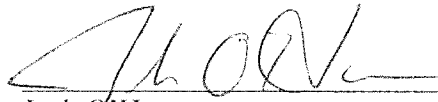
Accordingly, it is hereby ORDERED:


10. Petitioner Megan Smith's request for relief is DENIED.


DATED at Burlington, Vermont this 20<sup>th</sup> day of March,


2020.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Josh O'Hara

  
Patryck G. Kearney

  
Betsy McGavisk

  
Patrick Murphy<sup>2</sup>

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<sup>2</sup> In light of the ongoing COVID-19 pandemic, Mr. O'Hara signed the opinion for the other members of the Board with their permission.