



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 2/13/23

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk
Board Chair

cc: Sara Ahlers
Jacob Hinsdale

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

**In re: Request for Hearing of SARA AHLERS)
Regarding Withholding of Security) Security Deposit Appeal
Deposit by 270 PEARL STREET LLC)
for Rental Unit at 272 Pearl Street, #6)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on January 23, 2023. Board Chair Betsy McGavisk presided. Board Members Josh Wronski, Charlie Gliserman, Olivia Taylor and Evan Litwin were also present. Petitioner Sara Ahlers was present and testified remotely via Zoom. Respondent 270 Pearl Street LLC was represented at the hearing by Jacob Hinsdale. Also appearing and testifying was Travis Clark.

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 270 Pearl Street LLC is the owner of a rental unit, 270 Pearl Street, #6, in the City of Burlington which is the subject of these proceedings. Jacob Hinsdale manages the property. Travis Clark does maintenance work at the property.

2. Petitioner Sara Ahlers moved into the rental unit on June 1, 2017 under the terms of a written lease. Throughout her tenancy, petitioner had several different roommates who would be added to the lease as necessary. The most recent lease ran from May 16, 2022 to May 22, 2023. Jessica Gibson and Sira Clemmons-Sparks were added to the lease. The tenants were jointly and severally liable under the lease. Monthly rent was \$1875.00.

3. Petitioner paid a security deposit of \$1725.00 to respondent. Respondent also held a pet deposit of \$250.00. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.

4. Petitioner and Jessica Gibson moved out of the apartment on September 15, 2022. Sira Clemmons-Sparks continued to live in the apartment; she and her cosignors took over paying all the rent. The lease was terminated on November 30, 2022 at which time respondent took possession of it.

5. On November 30, 2022, respondent sent a written statement to petitioner in accordance with ordinance requirements. Said statement itemized damages of \$5,116.14. Interest in the amount of \$2.15 was credited to the deposit. None of the deposit was returned to petitioner.

6. Petitioner did not dispute the charges for smoke detectors that had been removed (\$375); for a lock change due to a missing key (\$350); and for removal of items that were abandoned (\$160). Petitioner acknowledged that one of her roommates was responsible for the broken kitchen window; the repair of the window was \$154.26.

7. Petitioner was responsible for paying all the utilities. The water charges for September, October and November were not paid. The unpaid water charges amounted to \$240.92.

8. Both parties testified with respect to a broken window in the living room. Jessica Gibson broke the window when she was trying to open it. There are a lot of antique windows in the building and they sometimes stick. Respondent has several ways in which tenants can notify them about problems in the apartment; respondent is very responsive to those requests. Jacob

Hinsdale testified that Jessica Gibson could have easily asked for help with the window and could have avoided breaking it.

9. When Sira Clemmons-Sparks vacated the apartment she did not leave it in good shape: it was dirty, the covers for the baseboards were off or falling off, the appliances were dirty, and there was damage to the walls, including damage caused by smoking in the apartment. As petitioner had not lived in the apartment since September, she did not have personal knowledge of the condition of it. Photos submitted by respondent support their testimony with respect to the condition of the apartment when Sira Clemmons-Sparks moved out of it.

10. The Board makes no findings with respect to the deductions for recaulking the bathtub and repairing the baseboard heater. The Board also notes that there are deductions for attorney's fees and fines for parking violations.

Conclusions of Law

11. 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.

12. 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.

13. 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). Proper notice was provided.

14. Based on the evidence, the Board concludes the deductions for cleaning, wall repairs and water charges were proper. In addition, the deductions for both broken windows were proper as the damage was attributable to one of the tenants. As the uncontested damages (\$885) and the contested damages found to be reasonable and proper (\$1340.92) exceed the amount of the deposit, the Board concludes it was proper for respondent to withhold the entire deposit plus interest.

15. The Board notes that respondent's deductions included attorney's fees and parking violations. Section 18-120(c) of the Minimum Housing Code permits a landlord to retain all or part of the security deposit for the actual cost to repair damage beyond normal wear and tear which is attributable to the tenant in order to maintain the condition and habitability of the unit, for nonpayment of rent, for nonpayment of utility or other charges the tenant was required to pay, and for expenses required to remove from the rental unit articles abandoned by the tenant. While it was not necessary for the Board to make findings or conclusions with respect to the deductions for attorney's fees and parking violations in this case, it is likely we would have concluded that such deductions are not allowable under the ordinance.

DATED at Burlington, Vermont this 13th day of February, 2023.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Evan Litwin
Evan Litwin

/s/ Charlie Gliserman
Charlie Gliserman

/s/ Josh Wronski
Josh Wronski

/s/ Olivia Taylor
Olivia Taylor