



HOUSING BOARD OF REVIEW

City of Burlington

149 Church Street Room 11

Burlington, Vermont 05401

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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 10/21/21

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara

Josh O'Hara

Board Chair

cc: Jacob & Kathleen Ahrens
Peter Yee

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

In re: Request for Hearing of JACOB and)
KATHLEEN AHRENS Regarding) Security Deposit Appeal
Withholding of Security Deposit by)
PETER YEE for Rental Unit at 477 St.)
Paul Street)

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on September 24, 2021. Board Chair Josh O’Hara presided. Board Members Betsy McGavisk and Charlie Gliserman were present; Board Member Evan Litwin appeared remotely. Petitioners Jacob and Kathleen Ahrens were present and testified. Respondent Peter Yee was also present and 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 Peter Yee is the owner of a rental unit, 477 St. Paul Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Jacob and Kathleen Ahrens moved into the rental unit with a written lease which ran from July 1, 2018 to June 28, 2019. Monthly rent was \$2100.00.
3. Petitioners paid a security deposit of \$2,000.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. Respondent did not return the deposit to petitioners. In addition, respondent did not send a written statement itemizing damages from the deposit nor did he notify petitioners of their right to appeal the withholding of their deposit to this Board. Petitioners argued that not only

was the deposit forfeited under city ordinance and state law due to the lack of notice, but the deposit was willfully withheld by respondent.

5. Beginning in November 2020, the roof at the property began leaking causing water damage in petitioners' apartment. Petitioners immediately notified respondent of the problem. From November 2020 until petitioners moved out, respondent attempted to have the roof fixed. The first roofer respondent hired did some work, but then stopped working. The second roofer who was hired never showed up to start the work despite several indications that he would begin soon. The third roofer finally resumed work on the roof. Throughout the months of waiting for the roof to be repaired, the ceilings in petitioners' apartment continued to leak. In May 2021, the ceiling in one of the bedrooms collapsed.

6. On April 22, 2021, petitioners gave 60 days' notice of their intent to vacate the apartment on June 30, 2021. They also requested that they be allowed to use the security deposit for June's rent. In addition, they requested that rent for May be lowered to \$1654.46 as compensation for the additional cost of heat they paid due to the leaking roof. Respondent did not reply to petitioner's email.

7. On May 9, 2021, petitioners sent a follow-up email informing respondent of the worsening of the leaks in the ceiling which resulted in one of the bedroom ceilings collapsing and causing damage to a mattress. Given the new damage and the continued problem, petitioners indicated their desire to terminate the lease on June 15 rather than June 30. They also requested that \$1450.00 of the security deposit be returned to them as compensation for all the problems in the apartment. Respondent did not reply to petitioner's email.

8. On May 21, 2021, petitioner Kathleen Ahrens texted respondent complaining about someone walking into their apartment with no notice. Petitioner also complained about the

ongoing problem with the roof and respondent's failure to respond to their recent communications. Respondent apologized for the problems with the roof and said he would pay them "double deposit for your trouble..." Petitioner responded, "Great – sounds fair to us. We'll be out June 15..." There was no discussion about rent for June.

9. Petitioners vacated the apartment on June 14, 2021 and notified respondent by email that they were out of the apartment. Petitioners provided their forwarding address to respondent and thanked him "for saying that you would compensate us fairly for the fact that we had to deal with 7 months of leaking holes in the ceiling, and your lack of response." Petitioners did not pay any rent for the month of June and expected respondent to return \$1450 of the deposit to them as they requested in their May 9, 2021 email to him.

10. Although respondent told petitioners he would pay them double the security deposit, he did not. When petitioners failed to pay any rent for the month of June, he was annoyed and changed his mind about giving them double the amount of the security deposit back. Respondent testified that he was counting on the rent money from June and when he didn't receive it, he was put in a bind financially. Although respondent offered to return double the amount of the deposit to petitioners, he expected them to pay rent for the month of June.

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 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).

14. A landlord who decides to retain all or part of a security deposit must comply with 3 specific requirements of the ordinance: the deposit must be returned within 14 days of the date the tenant vacated or abandoned the rental unit with a written statement itemizing any deductions; the statement must contain notice of the tenant’s right to appeal to the Housing Board of Review; and the statement must be hand-delivered or sent by certified mail.¹ See *Lieberman v. Circe*, No. S21-13 Cncv (Crawford, J., March 27, 2013) and Minimum Housing Code Sec. 18-120(c). The Vermont Supreme Court required the literal enforcement of these requirements in *In re Soon Kwon*, 189 Vt 598 (2011). Accordingly, a landlord who fails to meet all of these requirements forfeits the security deposit. Respondent did not meet any of the

¹An amendment to Sec. 18-120(c) removing the “certified mail” requirement took effect on January 7, 2015.

requirements: he did not return the deposit, he did not provide a statement of deductions from the deposit and he did not provide notice of petitioners' right to appeal the withholding of the deposit to this Board. Therefore, respondent forfeited the right to withhold any part of the deposit.

15. If the failure to return a security deposit with a statement within 14 days is willful, a landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(b)(e). Petitioners have also moved for double damages, alleging respondents' failure to return their security deposit was willful. As the Superior Court has recently held, "willfully" for purposes of the ordinances can mean violating the ordinance by design, by intention, by being obstinate or indifferent to the requirements of the law. *Harrington v. McCauley*, 1095-12-19 Cncv, slip op. at 1-2 (Vt. Sup. Ct. Feb. 4, 2020). At the end of May, 2021, respondent indicated to petitioners that he would give them double their deposit for all the trouble caused by the leaking roof. Petitioners accepted the offer and moved out on June 14, 2021. They did not pay rent for June and initially requested that respondent use the deposit for June's rent. However, on May 9, 2021, petitioners requested compensation from respondent in the amount of \$1450 for all the problems in the apartment. Although respondent indicated he would return double the deposit to petitioners, he did not return any money or communicate with them at all. At the hearing, respondent testified he got annoyed when petitioners didn't pay rent for June and decided to withhold the deposit. The Board concludes that respondent's actions exhibited the willful withholding of the deposit; respondent got annoyed with petitioners and decided not to return any money to them. While respondent testified petitioners' failure to pay rent for June put him in a bind financially, his explanation does not make sense when he offered to return double the deposit to them. Even if respondent believed he was rightfully owed \$2,000

for June's full rent, his actions are still a departure from the \$4,000.00 he offered to pay petitioners and which they had accepted.

16. Petitioners are entitled to recover interest on the security deposit. Minimum Housing Code Sec. 18-120(c). The Housing Code requires that the security deposit be held by the owner in an interest-bearing account with an interest rate equivalent to a current Vermont bank passbook savings account. Sec. 18-120(a). The Board applies the interest rate currently found in most bank passbook savings accounts – 0.25% simple annual interest.

Order

Accordingly, it is hereby ORDERED:

17. Petitioners Jacob and Kathleen Ahrens are entitled to recover from respondent Peter Yee the following amounts:

- a) \$2,000.00, the principal amount of the deposit improperly withheld after June 28, 2021;
- b) \$2,000.00, the amount of the deposit willfully withheld after June 28, 2021;
- c) Interest in the amount of \$14.97 on the entire deposit for the period July 1, 2018 to June 28, 2021; and
- d) Additional interest of \$0.01 per day from June 29, 2021 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 21st day of October, 2021.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk

Charlie Gliserman
Charlie Gliserman

/s/ Evan Litwin
Evan Litwin

Joshua O'Hara, Board Chair, dissenting. I agree fully with the Board's decision to that the Landlord, Peter Yee, should return the security deposit to the Tenants, Jacob and Kathleen Ahrens. I respectfully disagree with the Board's decision to award double damages to the Tenants.

The Landlord and Tenants had a lease requiring payment of \$2100 on the first of each month, and the Tenants paid a \$2100 security deposit to the Landlord. According to Kathleen Ahrens' email of April 22, 2021 terminating the lease, the Tenants were thankful for the opportunity to have rented the unit, but a leaking roof left them looking forward to leaving. Indeed, the Tenants would close on a home of their own on June 11, 2021, prior to the conclusion of the lease, according to the email.

The leaking roof was a problem throughout the fall, winter, and spring of 2020 to 2021. According to the Tenants' text exchanges with the Landlord, the roof began leaking in November 2020, got worse over time, and expanded from a single leak in a bathroom to a leak in a second room as well. In these text exchanges with the Landlord, Mr. Yee expresses frustration at finding roofers who will complete the job and with the weather. The Tenants submitted photos documenting the interior damage to the apartment caused by very obvious leaks, as well as photos from May 2021 showing what appears to an inadequate sheathing material covering the roof in that the sheathing does not extend to fully cover the edge of the roof.² The roof problem caused significant stress for the Tenants, as Kathleen Ahrens testified.

The text exchanges show the tensions between the Tenants and the Landlord escalated significantly in April and May, 2021. On April 17, Jacob Ahrens summary of the text messages show that he strenuously complained about the leaks due to two days of heavy rain. The Landlord responded that he had kept picking the wrong people to complete the repairs. On April 22, Kathleen Ahrens emailed the Landlord to give notice the Tenants would not renew their lease due to the leaks and because they were closing on a home on June 11, 2021. The Tenants noted that friends had encouraged them to wholly withhold rent from the Landlord, putting the rent in an escrow account, but the Tenants did not do that. Instead, they made the following offer to Mr. Yee:

1. The lease would terminate on June 30, 2021;
2. The Tenants would pay no rent for June 2021, but would allow the Landlord to keep the security deposit.
3. The Tenants would pay a reduced amount of rent for May 2021 to reflect their calculation of extra heating costs for the winter of 2020 to 2021.

² I refer specifically to the image titled "Roof 3_05-02-21.jpg" that was submitted into evidence at the hearing.

4. If the Landlord wished to commence a renovation to the attic, the Tenants would move out by June 15 if the Landlord would halve the rent for June 2021.
5. If accepted, the terms of this agreement would have significantly reduced the Tenants' obligations to the Landlord in advance of their closing date. Instead of owing Mr. Yee \$2100 rent for June, they would owe him nothing, and could have recouped \$1050 if Mr. Yee decided to renovate the attic. In return, they would not recoup their security deposit in July 2021.

There is no indication the Landlord accepted this offer. On April 25, 2021, Jacob Ahrens texted the Landlord and stated that the Tenants would "assume if we don't hear back from you your [sic] good with them." On April 30, 2021, Kathleen Ahrens asked again if the Landlord would accept, according to the text messages submitted. Mr. Yee did not respond.

Sometime around May 21, 2021 the Tenants experienced another unfortunate incident. Kathleen Ahrens' text messages show that she complained that a "random stranger walked into [their] family room" while Ms. Ahrens was unclothed. She complained that this was not the first time people had come in unannounced; apparently roofers had entered the unit during a surge in COVID-19 cases.

The Landlord appears to have immediately made an offer to resolve all the issues that attended the end of this lease: "[I'll] pay u double for your trouble..roofers screwed me..I'm sorry" and "When r u moving?" Ms. Ahrens replied, also immediately: "Great- sounds fair to us. We'll be out June 15. If you do need to show this place please give us 24 hours notice so we can plan accordingly." Mr. Yee said: "I'm sorry u deserve better I'm feeling bad. I'm going thru a divorce..life is getting crazy. Sorry." I understand this to have been a counteroffer to the Tenants' initial offer. They would receive \$4200 at the completion of their lease on June 30, and they would leave on June 15, 2021.

The exchange very obviously did not discuss June 2021's rent, which the Tenants did not wish to pay. I infer that this was could be because they had to pay closing costs on their new home, or because of any of the many other costs associated with buying a home. Whatever the reason, the Tenants did not pay June 2021's rent. In response, Mr. Yee did not return the security deposit. The parties did not discuss the security deposit with each other or sue each other in court after the lease ended.

On these facts, I do not agree that the Landlord willfully wrongfully withheld the security deposit. The Board has held that willfulness includes acts that are "voluntary and intentional, but not necessarily malicious," as well as acts of "inexcusable carelessness, whether the act is right or wrong." *In re Waine, et al*, Burlington Housing Bd. of Rev. (Sept. 17, 2019) (quoting Black's Law Dictionary (11th ed. 2019)) (internal quotes omitted). The Superior Court has described the willful component to mean obstinate or indifferent to the law's requirements. *Harrington v. McCauley*, Docket No. 1095-12-19 Cncv (Vt. Sup. Ct. Feb. 4, 2020). I do not agree that the Landlord's withholding was intentionally wrongful.

Viewed from the Landlord's perspective because his intent is at issue, the facts could reasonably be viewed in this way: the unit he had rented to Tenants had a major leak in its roof that he could not fix, for whatever reason. The Tenants were aware that they could potentially withhold rent, and they informed the Landlord of this. They wanted not to pay rent for June. Then, in May, the unfortunate incident with the unannounced visitor occurred and the Tenants were

angry. The Landlord offered to resolve all the issues by doubling the security deposit return, which would give him the time-value of the Tenants' rent. Then, importantly, the Tenants accepted his offer but then did not pay the June rent.

Because the evidence shows an offer to resolve the Tenant's troubles, acceptance of that offer, and then a breach of the agreement, I do not believe the Tenants have proven the Landlord was obstinate or indifferent to the requirement to return the security deposit. Viewed from the Landlord's perspective, he made a deal with the Tenants, and they broke the terms of the deal. Whatever the Landlord's feelings of annoyance, I cannot say that his decision to withhold the security deposit was motivated by a deliberate indifference to the security-deposit ordinance rather than the Tenants' breach of their agreement with the Landlord.

For these reasons, I would not award double damages in this case. I respectfully dissent.

/s/ Josh O'Hara

Josh O'Hara, Board Chair