



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 11/7/18

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Vice Chair

cc: Jonathan Allyn & Nathan Sloma
N. Paul Loomba

**STATE OF VERMONT
CHITTENDEN COUNTY, SS.**

**In re: Request for Hearing of JONATHAN)
 ALLYN and NATHAN SLOMA) CITY OF BURLINGTON
 Regarding Withholding of Security) HOUSING BOARD OF REVIEW
 Deposit by N. PAUL LOOMBA for)
 Rental Unit at 201 Park Street)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on October 15, 2018. Board Vice Chair Josh O’Hara presided. Board Members Patrick Kearney and Steven Goodkind were also present. Petitioners Jonathan Allyn and Nathan Sloma were present and testified. Respondent N. Paul Loomba testified via telephone conference call. Also appearing and testifying as a witness was Tom Rotella.

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 N. Paul Loomba is the owner of a rental unit, 201 Park Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Jonathan Allyn and Nathan Sloma moved into the rental unit under the terms of a written lease which ran from July 1, 2017 to June 30, 2018. Monthly rent was \$650.00 per tenant. Petitioners had another roommate who is not a party to this dispute.
3. Petitioners each paid a security deposit of \$650.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioners vacated the apartment on June 30, 2018.
5. Beginning on August 2, 2018, petitioners emailed respondent about the return of their deposit. Each time petitioners inquired about the deposit, respondent indicated he was still gathering the invoices for the damages. On August 12, 2018, respondent sent an email to petitioners with an accounting of the

damages and deductions from the deposit. Respondent's email did not inform petitioners of their right to appeal the withholding of the deposit to this Board. Respondent returned \$372.90 to each tenant.

6. Petitioners disputed the withholding of the deposit and the timeliness of respondent's notice to them. Respondent testified that an itemized statement wasn't provided until August 12 because he did not have all the invoices for the damages.

7. Interest was not credited to the deposit.

CONCLUSIONS OF LAW

8. 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.

9. 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.

10. 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).

11. 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. In this case, respondent failed to comply with the notice requirements by failing to include petitioners' appeal rights in the statement and by failing to return the deposit with an itemized list of deductions within 14 days. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

12. 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:


13. Petitioners Jonathan Allyn and Nathan Sloma are **each** entitled to recover from respondent N. Paul Looma the following amounts:

- a) \$277.10 of the principal amount of the deposit improperly withheld after July 14, 2018;
- b) Interest in the amount of \$2.38 on the entire deposit for the period July 1, 2017 to July 14, 2018; and
- c) Additional interest of \$0.002 per day from July 15, 2018 until such date as the amount improperly withheld is returned to each petitioner.

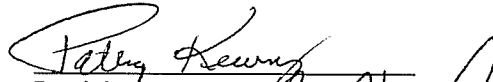
Dated at Burlington, Vermont this 7th day of November, 2018.

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

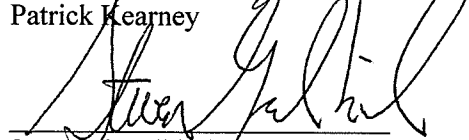
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Josh Q. Hara



Patrick Kearney



Steven Goodkind