

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

**In re: Request for Hearing of Khalid)
Almubarak and Victoria Green)
Regarding Withholding of Security) Security Deposit Appeal
Deposit by George Harrington for)
Rental Unit at 142 ½ Sandra Circle)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on July 19, 2021. Board Vice Chair Betsy McGavisk presided. Board Members Charlie Gliserman, Evan Litwin and Olivia Taylor were also present. Petitioners Khalid Almubarak and Victoria Green were present and testified. Respondent George Harrington 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 George Harrington is the owner of a rental unit, 142 ½ Sandra Circle, in the City of Burlington which is the subject of the following written lease which ran from February 1, 2021 through January 31, 2022. Monthly rent was \$1400.00.
3. Petitioners paid a security deposit of \$1400.00 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 April 30, 2021.
5. On May 6, 2021, respondent sent petitioners an itemized list of deductions from the security deposit. Said statement itemized one deduction totaling \$368.75 to re-rent the

apartment. Interest in the amount of \$3.50 was credited to the deposit. Respondent returned \$1034.75 of the deposit to petitioner.

6. Petitioners disputed the deduction of \$368.75 arguing that respondent breached the lease because the apartment wasn't habitable which resulted in them moving out before the end of the lease term. Respondent deducted the fee he was charged by Michelle Abair to re-rent the unit.

7. In March, petitioners found mice droppings in the kitchen drawers which they reported to respondent on March 25, 2021. Petitioners requested pest control immediately. In response, respondent set traps on March 26 and arranged for pest control on March 31. However, the person with whom respondent contracted had to reschedule the appointment due to Covid exposure; on March 30, respondent informed petitioners that the appointment had to be rescheduled.

8. On March 31, 2021, petitioners informed respondent that they found more mice droppings and needed professional intervention badly. Later that same day, petitioners gave
was uninhabitable. Petitioners were unwilling to live in an apartment with mice.

9. Respondent argued that petitioners were the ones who broke the lease when they moved out early. When respondent found out petitioners were moving out early, he hired Michelle Abair to re-rent the apartment in order to mitigate his damages. At the hearing, respondent noted that he responded to petitioners' complaint promptly and took steps to alleviate the problem. Respondent also noted that petitioners did not contact the Burlington Code Enforcement Office to lodge a minimum housing complaint. Respondent hired a new contractor who went to the unit on April 8, 2021 to address the problem.

Conclusions of Law

10. 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.

11. 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.

12. 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 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). Proper notice was provided.

13. Sec. 18-120(c) of the Minimum Housing Code allows a deposit to be withheld for the actual cost to repair damage beyond normal wear and tear that is attributable to the tenant, for nonpayment of rent, for nonpayment of utility and for expenses required to remove abandoned

items from the rental unit. Respondent withheld \$368.75 of the deposit for his cost to pay Michelle Abair to re-rent the apartment. Respondent charged the fee because petitioners terminated their tenancy early. Both parties argue that the other broke the lease. The Board makes no findings or conclusions as to whether or not the lease was broken and by whom, or whether or not the unit was habitable. The Board only considers whether or not a deduction is permitted under city ordinance, and if it is, whether or not it is reasonable. In this case, the Board concludes that the re-rental fee is not a deduction allowed under the ordinance. While the Board finds the re-rental fee cannot be deducted from the security deposit, there may be other remedies available to respondent, such as Small Claims Court.

Order

Accordingly, it is hereby ORDERED:

14. Petitioners Khalid Almubarak and Victoria Green are entitled to recover from respondent George Harrington the following amounts:

- a) \$368.75 of the principal amount of the security deposit improperly withheld after May
- b) Additional interest of \$0.002 per day from May 15, 2021 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 19th day of August, 2021.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Betsy McGavisk

/s/ Charlie Gliserman
Charlie Gliserman

/s/ Evan Litwin
Evan Litwin

/s/ Olivia Taylor
Olivia Taylor