



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 9/17/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Tanya Averill
32-38 Grant St LLC

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

**In re: Request for Hearing of TANYA AVERILL,)
CARLY AVERILL and TREY TAGLIERI) CITY OF BURLINGTON
Regarding Withholding of Security) HOUSING BOARD OF REVIEW
Deposit by 32-38 GRANT ST LLC for)
Rental Unit at 32 ½ Grant Street)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on August 19, 2019. Board Chair Josh O'Hara presided. Board Members Patrick Murphy, Olivia Pena and Betsy McGavisk were also present. Petitioners Tanya Averill, Carly Averill and Trey Taglieri were present and testified. Respondent 32-38 Grant St LLC was represented at the hearing by Laura Hinsdale and Jacob Hinsdale both of whom 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 32-38 Grant St LLC is the owner of a rental unit, 32 ½ Grant Street, in the City of Burlington which is the subject of these proceedings. Laura Hinsdale and Jacob Hinsdale manage the property.
2. Petitioners Tanya Averill, Carly Averill and Trey Taglieri moved into the rental unit on or about May 15, 2017 under the terms of a written lease. 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 May 24, 2019.
5. On May 31, 2019, respondent sent petitioners notice that \$418.49 of the security deposit was being withheld for painting and cleaning. Petitioners disputed the deduction of \$300.00 for painting.

Respondent returned \$981.86 of the deposit to petitioners. Interest in the amount of \$0.35 was credited to the deposit.

6. During their tenancy, petitioners painted the living room, the bathroom and a bedroom. The apartment had been painted by respondent in 2017 prior to petitioners moving in. Respondent did not object to petitioners painting, but required them to return any painted walls to a neutral color. Petitioners returned the walls they painted to neutral colors, but did not do a good job painting according to respondent: the walls were streaked and not carefully painted. In addition, respondent was unable to match the paint because petitioners did not leave any information about the color paint they used. Petitioners disputed the deduction of \$300.00 for painting because respondent provided no guidelines to them for painting. In addition, petitioners believed the charge to be excessive for the size of the rooms painted. Lastly, when the parties did a move out inspection together respondent did not indicate to them that there was a problem with the painting they did. Respondent only charged their cost for labor to paint, not the cost of materials.

7. Other itemized deductions were not disputed.

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). Proper notice was provided.

11. Based on the evidence, the Board concludes the deduction for painting was not reasonable. Petitioners returned the walls they painted to a neutral color as required by respondent. However, respondent provided no other guidelines as to their expectations for painting.

ORDER

Accordingly, it is hereby ORDERED:

12. Petitioners Tanya Averill, Carly Averill and Trey Taglieri are entitled to recover from respondent 32-38 Grant St LLC the following amounts:

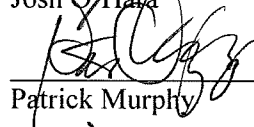
- a) \$300.00 of the principal amount of the deposit improperly withheld after June 7, 2019; and
- b) Additional interest of \$0.002 per day from June 8, 2019 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 17th day of September, 2019.

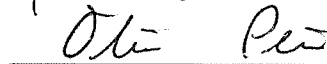
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



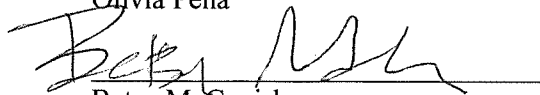
Josh O'Hara



Patrick Murphy



Olivia Pena



Betsy McGavisk