



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

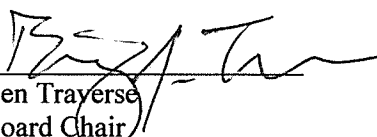
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 9/5/18

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Eli Barrett (for all tenants)
43 Isham St LLC/Luke Clavelle

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

**In re: Request for Hearing of ELI BARRETT,)
FELIX RAYNOR, SENOU LYNN and)
SAMUEL BAUM Regarding Withholding) CITY OF BURLINGTON
Of Security Deposit by 43 ISHAM) HOUSING BOARD OF REVIEW
ST LLC for Rental Unit at 43 Isham St)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on August 20, 2018. Board Chair Ben Traverse presided. Board Members Patrick Kearney and Patrick Murphy were also present. Petitioners Eli Barrett and Felix Raynor were present and testified. Respondent 43 Isham St LLC was represented at the hearing by Luke Clavelle. Also appearing and testifying as witnesses were Robert Lamoy, Emma Ste. Marie, Nicole Delong and Randy Delong.

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 43 Isham St LLC is the owner of a rental unit, 43 Isham Street, in the City of Burlington which is the subject of these proceedings. Luke Clavelle is a principal/member of the limited liability company.
2. Petitioners Eli Barrett, Felix Raynor, Senou Lynn and Samuel Baum moved into the rental unit on June 1, 2017 under terms of a written lease. Monthly rent was \$2120.00.
3. Petitioners paid a security deposit of \$2120.00 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 1, 2018.
5. On June 7, 2018, respondent sent petitioners a statement informing them that their entire deposit was being withheld for repairs, trash removal and cleaning. The statement itemized damages of \$1,857.23 for various repairs (replacing bulbs, replacing screens, repairing windows, replacing hardware,

replacing fixtures, patching walls, etc.) throughout the unit plus removing and hauling trash; \$165.99 to remove trash and furniture from the property (dump fees); and \$300 for cleaning. The statement did not include notice to petitioners of their right to request a hearing before this Board to dispute the withholding of the deposit.

6. Interest in the amount of \$2.12 was credited to the deposit.

7. Petitioners' request for hearing form indicated they were requesting double damages because they believed the failure to return the deposit was willful. However, at the hearing, petitioners withdrew their request.

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. The requirement that the statement be itemized is to provide tenants with enough information to determine whether they caused the alleged damage and whether the charges are reasonable.

Respondent's statement itemized 3 deductions from the deposit. The deduction of \$1857.23 for repairs encompassed a broad range of tasks in 9 rooms from replacing bulbs to patching walls; there is no indication of the time spent for various tasks nor a breakdown for the cost of materials. The Board concludes the statement is not sufficiently itemized with respect to the cost of repairs for petitioners to know what they are being charged for and whether the charges seem reasonable.

12. 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 petitioner's appeal rights in the statement and by failing to sufficiently itemize the statement with regard to the \$1857.23 deduction for repairs. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

ORDER

Accordingly, it is hereby ORDERED:

13. Petitioners Eli Barrett, Felix Raynor, Senou Lynn and Samuel Baum are entitled to recover from respondent 43 Isham St LLC the following amounts:

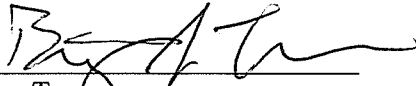
a) \$2122.12 of the principal amount of the deposit (plus interest) improperly withheld after June 15, 2018; and

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

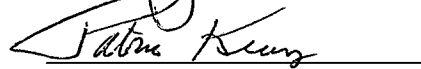
b) Additional interest of \$0.01 per day from June 16, 2018 until such date as the amount improperly withheld is returned to petitioners.

Dated at Burlington, Vermont this 5th of September, 2018.


CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Traverse



Pat Kearney



Patrick Murphy