



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 2/19/20

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

Josh O'Hara  
Board Chair

cc: Justin Barrows  
Frank Marcou

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

**In re: Request for Hearing of JUSTIN                    )**  
**BARROWS Regarding Withholding of            ) Security Deposit Appeal**  
**Security Deposit by FRANK MARCOU            )**  
**for Rental Unit at 32 Rose Street, #6            )**

**DECISION AND ORDER**

The above-named hearing came before the Housing Board of Review on January 21, 2020. Board Chair Josh O’Hara presided. Board Members Patrick Kearney, Patrick Murphy and Olivia Pena were also present. Petitioner Justin Barrows was present and testified. Respondent Frank Marcou was also present and testified. Appearing and testifying as a witness was Douglas Stover.

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 Frank Marcou is the owner of a rental unit, 32 Rose Street, #6, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Justin Barrows moved into the rental unit on June 1, 2017 under the terms of a written lease. Monthly rent was \$950.00.
3. Petitioner paid a security deposit of \$925.00 to respondent. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. The parties disputed the vacate date. Petitioner testified he moved out of the apartment on September 30, 2019, but left some items in the apartment with the permission of the new tenant. Petitioner gave the new tenant one of the keys to the apartment even though respondent had instructed him to leave the keys in a kitchen drawer when he was finished

moving out. Respondent testified that when workers went to the unit on October 1, petitioner and his belongings were still in the apartment and petitioner refused them access to the apartment. Petitioner denied refusing accessing to unit. Petitioner had belongings in the unit on October 1 and 2. Respondent considered October 3, 2019 as the date petitioner was fully moved out of the unit. The Board finds petitioner was completely out of the unit on October 2, 2019.

5. On October 15, 2019, respondent sent a written statement, by certified mail, to petitioner. Said statement itemized deductions of \$325.00 from the deposit. The written statement indicates \$573.00 was returned to petitioner. However, the Board's calculations indicate \$623.00 should have been returned to petitioner. Petitioner disputed the timeliness of the notice of withholding, as well as the deductions taken from the deposit.

6. Interest in the amount of \$23.00 was credited to the deposit.

7. Respondent deducted a total of \$115 for cleaning related charges: \$40 for general cleaning and \$75 to shampoo the carpet. Petitioner did not clean the kitchen when he moved out; as for the rest of the apartment, he testified that he tidied it before leaving, including vacuuming the carpets. Petitioner also argued that the apartment was not clean when he moved into it and he felt justified in leaving it in the same condition. With respect to shampooing the carpet, petitioner testified the carpet was stained when he moved into the unit; in addition, he shampooed the carpet when he moved into the apartment so did not feel as though it was his responsibility to do it again. The move-in inspection checklist, signed by both parties, indicates the apartment was clean when petitioner moved into it. With respect to the carpet, the checklist notes some stains. Respondent testified the large stains on the carpet that necessitated shampooing it were not there when petitioner moved into the apartment. Photos submitted by

respondent show the kitchen and bathroom needed to be cleaned; in addition, photos show some large stains on the carpet, as well as debris on it that needed vacuuming.

8. Respondent deducted \$60 for painting. Respondent told petitioner he could paint in the apartment as long as the colors were neutral; if the colors were not neutral and the new tenant did not like the color, respondent told petitioner he would be responsible for repainting. Petitioner painted his bedroom and the kitchen cabinets and trim in the kitchen. The painting in the bedroom was acceptable. However, the kitchen cabinets were painted bright red and the kitchen trim painted blue. In addition, there was a hole in a wall that was patched and needed painting.

9. Respondent deducted \$50 to remove trash and furniture left in the unit by petitioner. Petitioner denied leaving any trash or items behind; he testified that he only left items that the new tenant said he wanted. However, respondent testified the new tenant only agreed to keep a rocking chair which was on the porch. Respondent disposed of all other items left by petitioner: baby gates, table, snowboards, wooden pallets and outdoor folding chairs, all of which were documented in photos submitted by respondent.

10. Respondent deducted \$60 to replace a broken bar on the door of the refrigerator. Petitioner disputed the cost to replace the bar as he found the item on Amazon for \$23.95. Respondent testified the deduction reflected what he was charged by the appliance person to make the repair. As of the date of the Board's hearing, the refrigerator bar had not been replaced or fixed.

11. Respondent deducted \$40 to repair a broken window in the kitchen. Petitioner denied breaking the window and testified the window was broken during his entire tenancy. The move-in inspection checklist does not note any broken windows in the apartment when petitioner

moved into it. In addition, a city inspection report for the unit dated June 4, 2018 and submitted by petitioner does not indicate a broken window in the kitchen.

### **Conclusions of Law**

12. 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.

13. 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.

14. 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). Timely and proper notice was provided.

15. Section 18-120(c) of the Minimum Housing Code permits a landlord to retain all or part of the security deposit for the actual cost to repair damage beyond normal wear and tear

which is attributable to the tenant in order to maintain the condition and habitability of the unit, for nonpayment of rent, for nonpayment of utility or other charges the tenant was required to pay, and for expenses required to remove from the rental unit articles abandoned by the tenant.

Section 18-2 defines normal wear and tear as

the deterioration which occurs, based upon the reasonable use for which the dwelling unit or rooming unit is intended, without negligence, carelessness, accident or abuse of the premises or supplied equipment or appliances by the occupant or members of his household or their invitees or guests.

In *Mongeon Bay Properties, LLC v. Mallets Bay Homeowner's Ass'n*, the Vermont Supreme Court elaborated on the contours of the normal-wear-and-tear concept. The Court explained that the analysis will examine: 1) whether the tenant made reasonable use of the property; 2) the type of property, as well as its context and use; and 3) whether the tenant took reasonable steps to avoid damage to the property. 2016 VT 64, ¶¶ 32-37, 202 Vt. 434, 149 A.3d 940.

16. Based on the evidence, the Board unanimously concludes that the deductions for cleaning, shampooing the carpet and painting were reasonable. The need to clean the unit, including shampooing the carpet, was beyond normal wear and tear and attributable to petitioner. That the petitioner believed the apartment was unclean when he moved in did not absolve him of his obligation to return the apartment to the respondent in a reasonably clean condition. With respect to painting, the need to paint was attributable to damage caused by petitioner, and thus was a proper deduction. The Board also concludes the amount deducted for painting was reasonable.

17. Based on the evidence, the Board concludes by a vote of 3 to 1 that the deductions to remove trash and furniture and to repair the broken window were reasonable. Section 18-120(c) of the Minimum Housing Code specifically allows for deductions from the security deposit to remove articles abandoned by a tenant. Petitioner left items in the apartment that needed to be

removed so it was reasonable for respondent to deduct the cost to do that from the deposit. Similarly, the kitchen window was broken during petitioner's tenancy and attributable to petitioner.

18. Based on the evidence, the Board concludes the deduction to replace the broken refrigerator bar was not proper. Petitioner made reasonable use of the refrigerator without being negligent or careless. Therefore, the Board concludes the damage was a result of normal wear and tear.

### Order

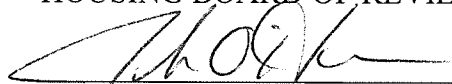
Accordingly, it is hereby ORDERED:

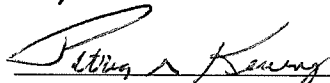
19. Petitioner Justin Barrows is entitled to recover from respondent Frank Marcou the following amounts:

- a) \$110.00<sup>1</sup> of the principal amount of the security deposit improperly withheld after October 16, 2019; and
- b) Additional interest of \$0.0004 per day from October 17, 2019 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 19<sup>th</sup> day of February, 2020.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
\_\_\_\_\_  
Josh O'Hara

  
\_\_\_\_\_  
Patrick G. Kearney

\_\_\_\_\_  
Olivia Pena

<sup>1</sup> The \$110.00 to be returned includes the \$50 error made by respondent when he calculated the amount to be returned to petitioner.



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Patrick Murphy