



**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

7/21/22

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk  
Betsy McGavisk  
Board Vice Chair

cc: Moataz Behairy  
Susan Warner

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

**In re: Request for Hearing of Moataz Behairy )  
Regarding Withholding of Security ) Security Deposit Appeal  
Deposit by Susan Warner for Rental Unit )  
At 283 Appletree Point Road )**

**DECISION AND ORDER**

The above-named hearing came before the Housing Board of Review on June 13, 2022; the meeting was held remotely via Zoom. Board Chair Josh O’Hara<sup>1</sup> presided. Board Members Betsy McGavisk, Charlie Gliserman, Evan Litwin and Olivia Taylor were also present. Petitioner Moataz Behairy was present and testified. Respondent Susan Warner 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 Susan Warner is the owner of a rental unit, 283 Appletree Point Road, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Moataz Behairy and his family moved into the rental unit with a written lease which ran from November 15, 2021 to April 30, 2022.
3. Petitioner paid a security deposit of \$2500.00 to respondent. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the unit on May 7, 2022, but left a large mural at the premises until May 8, 2022 when it was removed.

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<sup>1</sup> Josh O’Hara’s term expired on June 30, 2022.

5. On May 17, 2022, respondent sent, by certified mail, a written statement to petitioner; respondent also emailed the information to petitioner on May 18, 2022. Said statement itemized deductions from the deposit totaling \$7,640.00. The statement did not include notice of petitioner's right to request a hearing before this Board to dispute the deductions.

6. Interest was not credited to the deposit.

7. Petitioner disputed the deductions. In addition, petitioner claimed that the deposit was willfully withheld and requested that the Board order petitioner to pay double the amount of the deposit withheld. The basis of petitioner's claim of willful withholding is that the itemized deductions were both faulty and exaggerated. Petitioner testified that he took great care in the house while he lived there. Petitioner did acknowledge causing some damage.

8. Respondent denied that the withholding of the deposit was willful. Respondent documented the damages in the unit and the cost to make repairs. Respondent attributed the damage to petitioner. The move-in inspection list indicates the house was in good condition when petitioner moved into it. At the hearing, respondent did not respond to questions about whether or not notice was provided; however, written correspondence submitted to the Board indicated that the failure to provide notice was unintentional.

#### **Conclusions of Law**

9. 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.

10. 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.

11. 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 to the 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).

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 within 30 days; and the statement must be hand-delivered or sent by certified mail.<sup>2</sup> *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. The Board concludes respondent’s

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<sup>2</sup>An amendment to Sec. 18-120(c) removing the “certified mail” requirement took effect on January 7, 2015.

notice of withholding to petitioner was not proper as it did not contain notice of petitioner's right to appeal the withholding of the deposit to this Board. Therefore, the Board concludes respondent forfeited the deposit.

13. If the failure to return a security deposit with a statement within 14 days is willful, a landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(b)(e). Petitioners also moved for double damages, alleging respondent's failure to return their security deposit was willful. As the Superior Court has recently held, "willfully" for purposes of the ordinances can mean violating the ordinance by design, by intention, by being obstinate or indifferent to the requirements of the law. *Harrington v. McCauley*, 1095-12-19 Cncv, slip op. at 1-2 (Vt. Sup. Ct. Feb. 4, 2020). Despite petitioner's arguments, the Board concludes the deposit was not willfully withheld. Respondent documented damages in the unit, as well as the cost to make repairs, and believed they were attributable to petitioner.

14. Petitioner is 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:

15. Petitioner Moataz Behairy is entitled to recover from respondent Susan Warner the following amounts:

a) \$2,500.00 of the principal amount of the security deposit improperly withheld after May 22, 2022;

b) Interest in the amount of \$3.80 on the entire deposit for the period November 13, 2021 to May 22, 2022; and

c) Additional interest of \$0.02 per day from May 23, 2022 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 21 day of July, 2022.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk  
Betsy McGavisk

/s/ Charlie Gliserman  
Charlie Gliserman

/s/ Evan Litwin  
Evan Litwin