



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 7/25/22

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk
Vice Board Chair

cc: Liam Bell
Michael Shea, Jr. and Sr.

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

In re: Request for Hearing of LIAM BELL)
Regarding Withholding of Security) Security Deposit Appeal
Deposit by MICHAEL SHEA, SR. and)
MICHAEL SHEA, JR. for Rental Unit at)
565 Main Street)

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on June 13, 2022; the hearing was held remotely via Zoom. Board Chair Josh O’Hara presided¹. Board Members Charlie Gliserman, Olivia Taylor and Evan Litwin were also present. Petitioner Liam Bell was present and testified. Respondents Michael Shea, Sr. and Michael Shea, Jr., although notified of the hearing and the opportunity to be heard, were not present.

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. Respondents Michael Shea, Sr. and Michael Shea, Jr. are the owners of a rental unit, 565 Main Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Liam Bell moved into the rental unit on December 11, 2020. Petitioner paid a security deposit of \$995.00 to respondents. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on March 31, 2022.
5. On April 15, 2022, respondents returned \$497.50 of the deposit through Zelle, a peer-to-peer payment system. Petitioner originally requested to pick up his deposit and mail, but respondents did not respond to his request. Respondents did not provide an itemized statement

¹ Josh O’Hara’s term expired on June 30, 2022.

of deductions from the deposit. In addition, respondents did not inform petitioner of his right to dispute the withholding of his deposit to this Board.

6. Petitioner argued that respondents willfully withheld the deposit. When petitioner requested that his deposit be returned, respondents acknowledged his request and returned part of the deposit, but they did not provide any reason for the withholding of the deposit.

7. At the hearing, the Board took notice of a December 2020 decision and order issued to respondents with respect to a security deposit dispute at the subject property. That decision concluded that respondents forfeited the deposit because they did not return the deposit or provide an itemized list of deductions from the deposit. In addition, the Board ordered respondent to return double the amount of the deposit withheld as we concluded the deposit was willfully withheld. The Board's decision in that case clearly outlined the notice requirements under city ordinance and state law.

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 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).

11. 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.² 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 respondents forfeited the deposit as they did not provide an itemized list of the deductions from the deposit to petitioner and they did not provide notice of petitioner's right to appeal to this Board.

12. If the failure to return a deposit with a written statement within 14 days is willful, the landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). Respondents have been fully informed of their obligations

²An amendment to Sec. 18-120(c) removing the "certified mail" requirement took effect on January 7, 2015.

under city ordinance and state law with respect to the return, or withholding, of a security deposit. Despite that knowledge, respondents have again failed to provide proper notice of the withholding of petitioner's deposit or to provide a list of the itemized deductions from the deposit. Consequently, the Board concludes that respondents willfully withheld a portion of the deposit.

13. Petitioners are 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:

12. Petitioner Liam Bell is entitled to recover from respondents Michael Shea, Sr. and Michael Shea, Jr., the following amounts:

- a) \$497.50 of the principal amount of the security deposit improperly withheld after April 14, 2022;
- b) \$497.50 for the willful withholding of \$497.50 of the security deposit;
- c) Interest in the amount of \$3.36 on the entire deposit for the period December 11, 2020 to April 14, 2022; and
- d) Additional interest of \$0.003 per day from April 15, 2022 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 25th day of July, 2022.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Charlie Gliserman
Charlie Gliserman

/s/ Evan Litwin
Evan Litwin

/s/ Olivia Taylor
Olivia Taylor