



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 1/24/20

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Sandra Bevans for Estate of Kenneth Bevans
Cathedral Square Corp., attn.: Colleen Lee

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

In re: Request for Hearing in ESTATE OF)
KENNETH BEVANS Regarding) Security Deposit Appeal
Withholding of Security Deposit by)
CATHEDRAL SQUARE CORP. for)
Rental Unit at 1197 North Ave, Apt. 107)

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on January 6, 2020. Board Chair Josh O’Hara presided. Board Members Patrick Kearney, Patrick Murphy, Olivia Pena and Betsy McGavisk were also present. Petitioner Estate of Kenneth Bevans was represented by Sandra Bevans (Kenneth Bevans’ daughter) who testified. Respondent Cathedral Square was represented by Colleen Lee who testified. Also appearing was Jess People.

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 Cathedral Square Corporation is the owner of a rental unit, 1197 North Avenue, Apt. 107, in the City of Burlington which is the subject of these proceedings.
2. Kenneth Bevans moved into the rental unit on or about June 29, 2012. Mr. Bevans lived in the unit until his death on September 25, 2019. Sandra Bevans requested this hearing on behalf of her father’s estate. Colleen Lee objected to Ms. Bevans’ standing to bring this case because the Probate Court has not appointed her as the administrator of Kenneth Bevans’ estate.
3. Kenneth Bevans paid a security deposit of \$225.00 to respondent. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.

4. Sandra Bevans returned possession of the apartment to respondent on October 15, 2019.

5. On October 21, 2019, respondent sent a statement to petitioner, care of Sandra Bevans, itemizing deductions from the security deposit in excess of the amount of the security deposit. None of the deposit was returned. The statement did not include notice of the opportunity to request a hearing before this Board to dispute the withholding of the deposit.

6. Interest in the amount of \$16.43 was credited to the deposit.

Conclusions of Law

7. 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.

8. 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.

9. 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).

10. 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. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

Order

Accordingly, it is hereby ORDERED:

11. Petitioner Estate of Kenneth Bevans is entitled to recover from respondent Cathedral Square Corporation the following amounts²:

a) \$242.43 of the principal amount of the deposit (including accrued interest) improperly withheld after October 29, 2019; and


b) Additional interest of \$0.002 per day from October 30, 2019 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 24th day of January, 2020.

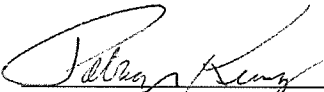
¹ An amendment to Sec. 18-120(c) removing the "certified mail" requirement took effect on January 7, 2015.

² Colleen Lee did not object to returning the deposit as long as it was returned to the Estate of Kenneth Bevans.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Josh O'Hara

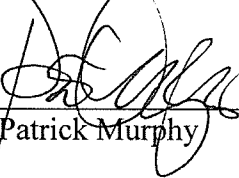


Patrick G. Kearney



Olivia Pena

Betsy McGavisk



Patrick Murphy