



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 10/2/18

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O’Hara
Board Vice Chair

cc: Christian Bingham
William Hart
TKS Properties LLC

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

**In re: Request for Hearing of CHRISTIAN)
BINGHAM and WILLIAM HART) CITY OF BURLINGTON
Regarding Withholding of Security) HOUSING BOARD OF REVIEW
Deposit by TKS PROPERTIES LLC for)
Rental Unit at 69 Main Street)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on September 17, 2018. Board Vice Chair Josh O'Hara presided. Board Members Ben Traverse, Patrick Kearney and Steven Goodkind were also present. Petitioner Christian Bingham was present and testified. Respondent TKS Properties LLC was represented at the hearing by Shelly Maynard who testified. Appearing and testifying as witnesses were Mark Lorrain, William Bingham and Bonnie Ferro.

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 TKS Properties LLC is the owner of a rental unit, 69 Main Street, in the City of Burlington which is the subject of these proceedings. Shelly Maynard manages the property.
2. Petitioners Christian Bingham and William Hart moved into the rental unit on or about May 1, 2015 under the terms of a written lease; William Bingham (Christian Bingham's father) and Bonnie Ferro (William Hart's mother) co-signed the lease. Monthly rent was \$1700.00.
3. Petitioners paid a security deposit of \$1700.00 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 May 28, 2018.
5. On June 11, 2018, respondent sent, by certified mail, a written statement to petitioners in accordance with ordinance requirements. Said statement itemized deductions totaling \$3,887.50. Some of

the costs of repairs were unknown at that time so respondent sent a final security deposit transmittal to petitioners on July 12, 2018.

6. Interest in the amount of \$2.96 was credited to the deposit. Petitioners disputed the amount of interest that was credited to their deposit.

7. Both parties testified with respect to unpaid rent which appeared as an \$887.50 deduction on the itemized statement. The deduction was for half a month's rent for June, 2018. The term of the current lease was 12 months, "commencing on 5/28/17 and expiring on Saturday 6/30/18 by noon." Petitioners argued that the June 30, 2018 termination date was an error. In support of their argument they pointed to a communication between them and respondent's leasing agent, Stephanie Casavant, in which Ms. Casavant reminded them that the lease expired on May 27, 2018 at noon. In addition, a 12-month lease beginning on May 28, 2017 would expire on May 28, 2018, not June 30, 2018. Petitioners also argued that they had a mutual agreement with respondent to vacate the apartment on May 28; Shelly Maynard disputed coming to such an agreement. In addition, Ms. Maynard disputed that Stephanie Casavant was their agent and had the authority to agree to a different move out date; Ms. Maynard testified that Ms. Casavant was solely the leasing agent and did not manage the property in any way. Nonetheless, Stephanie Casavant signed the move-in inspection form (signing as the property manager), she emailed petitioners about arranging a move-out inspection, and she received invoices for work done at the property and for painting supplies.

8. Both parties testified with respect to the deduction for damaged ceiling tiles and replacing tiles. The cost to repair the damage was not specifically itemized by respondent; an invoice submitted by Mark Lorrain itemized a charge of \$70.00 for ceiling tiles. Mr. Lorrain replaced 21 tiles. Petitioners estimated the cost (labor and supplies) to replace 10 tiles as \$87.20.

9. Both parties testified with respect to painting the apartment. An invoice submitted by Mark Lorrain for painting (labor) indicated a cost of \$1400.00. Petitioners argued that painting the apartment after 3 years was part of normal wear and tear. The apartment was newly painted and renovated when petitioners moved into it. Shelly Maynard does not expect an apartment to necessarily need repainting

even after 3 years. Ms. Maynard testified the reason the apartment needed to be painted was because of all the holes in the walls. The charge to patch holes in the walls was not specifically itemized by respondent. Petitioners did not dispute that there were some holes that needed to be patched, and they estimated it would cost \$49.82 to do so.

10. Both parties testified with respect to the deduction to rehang closet doors. The cost to repair the doors was not specifically itemized by respondent; the itemized statement indicated the bottom and top guides for the doors were damaged or missing. Mark Lorrain's invoice indicated a charge of \$35 to fix the closet doors.

11. Both parties testified with respect to the bathroom and deductions related to it: repairing the sink, replacing the toilet seat and towel rod, and cleaning. The cost to repair the damage and to clean was not specifically itemized by respondent. Mark Lorrain's invoice indicated the towel bar cost \$35.00 and the repair to the sink top cost \$70.00. The invoice for cleaning the apartment was not itemized; respondent was charged \$290.00 for cleaning done in the apartment after petitioners moved out.

12. Both parties testified with respect to repairing damage to the wood floor. There were some deep gouges and a deep scratch in the wood floor that Mark Lorrain repaired for respondent. Mr. Lorrain's invoice for his labor to make the repairs was \$70.00; the cost of the materials was not indicated. Petitioners did not dispute the damage, but were unable to tell from the itemized statement how much it cost to repair the floor.

13. Both parties testified with respect to the deduction for a new lazy susan door in the kitchen. The door would not close and respondent replaced it. Petitioners argued that the damage was normal wear and tear. The itemized statement listed the cost to repair the damage as \$108.00: \$35 for labor and \$73 for the door.

14. Both parties testified with respect to cleaning done throughout the apartment which appeared as a \$290.00 deduction on the itemized statement. The invoice from the cleaner indicated 9 hours was spent in the apartment cleaning. The cleaning done included: the entry stairs; floors in the kitchen, bathroom, bedrooms and living room; the appliances in the kitchen; the entire bathroom (tub, toilet,

floors, etc); the doors, walls and shelves in the bedrooms; and the windows in the living room. Petitioners disputed the charge as being excessive.

15. Both parties testified with respect to the kitchen countertop repair which appeared as a \$120.00 deduction on the itemized statement. The end cap for the kitchen countertop was missing. Petitioners argued the damage was normal wear and tear and attributed it to poor workmanship when it was installed. The invoice from Kitchen World indicated it cost \$120.00 to repair the damage.

16. Both parties testified with respect to the replacement of broken glass in the living room window which appeared as a \$263.00 deduction on the itemized statement. The window was repaired by Burlington Glass Center for \$262.78. Respondent attributed the damage to petitioners, claiming they were not careful when closing the window. Petitioners argued that the counter weights in the window were broken at the beginning of the tenancy, and that's why the window broke. The Board finds petitioners' testimony about the windows more persuasive and finds the damage was not attributable to them.

17. The following itemized deductions were not disputed:

| | |
|--|---------------|
| • Garbage disposal (labor) | \$ 70.00 |
| • Dining chandelier sconces/light bulbs, | |
| Heating cover in bedroom | 70.00 |
| • Screen repair (living room window) | 20.00 |
| • Repairs holes in mortar in brick wall | 35.00 |
| • Light bulbs | 13.00 |
| • Entry light fixture | 13.00 |
| • Chandelier sconces | 25.00 |
| • Smoke detector batteries | 2.00 |
| • Garbage disposal | <u>155.00</u> |
| Total | \$403.00 |

CONCLUSIONS OF LAW

18. 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.

19. 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.

20. 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). Proper notice was provided.

21. Based on the evidence and testimony, the Board concludes the deduction for unpaid rent was not reasonable. The Board concludes Stephanie Casavant acted as respondent's agent when she told petitioners that the lease terminated on May 27, 2018. Consequently, it was not reasonable to withhold any rent for June, 2018.

22. Based on the evidence and testimony, the Board concludes the deduction for painting was not reasonable as it was part of normal wear and tear. However, repairing holes in the walls is not normal wear and tear. The Board concludes a reasonable deduction to patch the holes is \$50.00.

23. Based on the evidence and testimony, the Board concludes there were 21 ceiling tiles that needed to be replaced. A reasonable deduction for the repairs is \$150.00.

24. Based on the evidence and testimony, the Board concludes the closets doors needed to be rehung and concludes a reasonable deduction for the work is \$35.00.

25. Based on the evidence and testimony, the Board concludes the hardwood floor was damaged during the tenancy and a reasonable deduction for repairing the floor is \$80.00.

26. Based on the evidence and testimony, the Board concludes the damage to the lazy susan door was attributable to petitioners and was not part of normal wear and tear. The Board concludes the \$108.00 deduction listed on the itemized statement was reasonable.

27. Based on the evidence and testimony, the Board concludes there was cleaning that needed to be done in the apartment beyond what would expect as part of normal wear and tear. The Board concludes a reasonable deduction is \$150.00.

28. Based on the evidence and testimony, the Board concludes the bathroom sink, toilet seat and towel rod were damaged and a reasonable deduction for the damage is \$105.00.

29. Based on the evidence and testimony, the Board concludes the damage to the countertop was not normal wear and tear, and was attributable to petitioners. The Board concludes the deduction of \$120.00 was reasonable.

30. Based on the evidence and testimony, the Board concludes the broken window was not attributable to petitioners. Therefore, the deduction of \$263.00 to repair the window was not reasonable.

31. Petitioners disputed the amount of interest (\$2.96) that was credited to their deposit. 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. Petitioners lived in the apartment for 3 years and 26 days. Accordingly, interest in the amount of \$13.05 should have been credited to the deposit.

ORDER

Accordingly, it is hereby ORDERED:

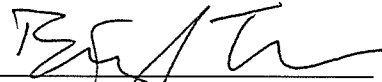
32. Petitioners Christian Bingham and William Hart are entitled to recover from respondent TKS Properties the following amounts:

- a) \$499.00 of the principal amount of the deposit improperly withheld after May 28, 2015;
- b) Interest in the amount of \$13.05 on the entire deposit; and

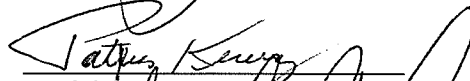
c) Additional interest of \$0.003 per day from June 12, 2018 until such date as the amount improperly withheld is returned to petitioners.

Dated at Burlington, Vermont this 2nd day of October, 2018.

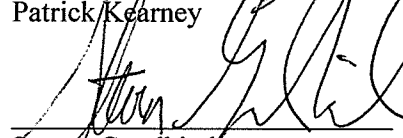
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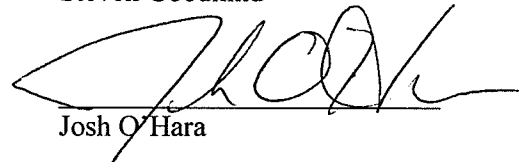
Ben Traverse



Patrick Kearney



Steven Goodkind



Josh O'Hara