



HOUSING BOARD OF REVIEW

City of Burlington

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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 10/19/22

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk
Board Chair

cc: Jackson Bond (for all tenants)
David Palmer

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

**In re: Request for Hearing of JACKSON BOND,)
NICHOLAS LEVINE, JOSHUA BARSKI)
And KYLE SMELSER Regarding)
Withholding of Security Deposit by) Security Deposit Appeal
DAVID PALMER for Rental Unit at 366)
Pearl Street)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on September 19, 2022; the meeting was held remotely via Zoom. Board Vice Chair Betsy McGavisk presided. Board Members Charlie Gliserman, Evan Litwin, Josh Wronski and Olivia Taylor were also present. Petitioners Jackson Bond, Nicholas Levine, Joshua Barski and Kyle Smelser were present and testified. Respondent David Palmer 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 David Palmer is the owner of a rental unit, 366 Pearl Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Jackson Bond, Nicholas Levine, Joshua Barski and Kyle Smelser moved into the rental unit with a written lease which ran from June 1, 2021 to May 26, 2022. Monthly rent was \$5,000.00.
3. Petitioners paid a security deposit of \$4,500.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.

4. The parties disputed the move out date. Petitioners testified they vacated the house on May 26, 2022 when the lease ended. Respondent testified that Joshua Barski returned the keys to the house to him on May 27, 2022 and continued to move items out of it. The Board finds petitioners vacated the house on May 27, 2022.

5. On June 1, 2022, respondent emailed petitioners and informed them of likely deductions from the deposit to cover damages and cleaning in the house, for unpaid rent and for the cost to remove items left in the unit. Respondent indicated he was still gathering bills and estimates for the repairs and cleaning and would send a detailed itemization once he had them.

6. On June 9, 2022, respondent emailed petitioners again and informed them he was still waiting for bills from contractors. The email indicated he paid a cleaning crew \$500.00 to clean the house. Respondent indicated he would finalize deductions from the deposit once he had all the bills from the contractors.

7. On June 13, 2022, respondent emailed petitioners with a list of deductions from the security deposit. The email itemized deductions of \$4,854.44 from the deposit. In addition, respondent's email indicated he was still calculating the costs for additional repairs in the house. Respondent stated that none of the deposit would be returned as the damages and unpaid rent exceeded the cost of the deposit. Interest was not credited to the deposit.

8. None of respondent's emails included notice to petitioners of their right to request a hearing before this Board within 30 days. Respondent acknowledged he did not provide that notice to petitioners.

9. At the hearing respondent questioned why the Board was hearing the case as he filed a complaint against petitioners in Small Claims Court on September 2, 2022. Respondent believed the Board should defer to Small Claims Court. Petitioners filed their request for hearing on July

8, 2022 on the basis that the deposit had not been returned and they did not receive an itemized list of deductions from the deposit. On July 11, 2022, the Board's Clerk notified both parties of petitioners' filing. On August 17, 2022, the Board notified both parties that their dispute was scheduled for hearing on September 6, 2022. Respondent requested postponement of the September 6 hearing which was granted. The hearing was then rescheduled for this meeting date.

Conclusions of Law

10. 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.

11. 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.

12. State law gives municipalities the authority to create a housing board of review. 24 V.S.A. Sec. 5005. Under that authority, a housing board of review has the power to hear disputes related to security deposits. Ordinances related to housing boards (as well as housing codes) are to be read most favorably to municipalities; it was the intent of the legislature to give municipalities the fullest and most complete powers possible concerning these matters. 24 V.S.A. Sec. 5009. In the subject case, petitioners filed a request for hearing on July 8, 2022 as was their right under city ordinance. Minimum Housing Code Sec. 120. The Board noticed that filing to the parties on July 11, 2022, in essence taking jurisdiction over the dispute. Not until 2 months later - after respondent was granted postponement of the first scheduled hearing - did

respondent file a complaint in Small Claims Court. Respondent argues that the Board should defer to the court but cites no provision that we are required to do so. Consequently, in keeping with the intent of the legislature's grant of authority, we will not defer the matter to small claims court, particularly when respondent's complaint was filed months after petitioners' request for a hearing.

13. 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).

14. 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.¹ See *Lieberman v. Circe*, No. S21-13 Cncv (Crawford, J., March 27, 2013) and Minimum

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

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. Respondent was required to return the deposit with an itemized list of deductions no later than June 10, 2022 – 14 days from the date petitioners vacated the house. Even if respondent’s emails of June 1 or June 9 could be considered an itemized statement of deductions, respondent did not provide petitioners with notice of their opportunity to appeal in any of his emails. Consequently, the Board concludes respondent forfeited the deposit.

15. 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:

16. Petitioners Jackson Bond, Nicholas Levine, Joshua Barski and Kyle Smelser are entitled to recover from respondent David Palmer the following amounts:

a) \$4500.00 of the principal amount of the security deposit improperly withheld after June 10, 2022;

b) Interest in the amount of \$11.52 on the entire deposit for the period June 1, 2021 through June 10, 2022; and

c) Additional interest of \$0.03 per day from June 11, 2022 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 19th day of October, 2022.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Charlie Gliserman
Charlie Gliserman

/s/ Josh Wronski
Josh Wronski

/s/ Olivia Taylor
Olivia Taylor

Evan Litwin, concurring.

Deferring to the upper courts' decision *In re Soon Kwon*, the Board is held strictly to the literal interpretation of Burlington's security deposit ordinance (Minimum Housing Code Sec. 18-120). In this case, the respondent failed to provide an itemized list within 14 days and notify the tenants of their right to appeal to this board within 30 days of receipt. With that said, the Board is oft tasked with decision-making using a *lens of reasonableness*. While I am compelled to ultimately agree with the majority on this case, I felt that the respondent in this case made reasonable efforts to communicate with the tenants and made reasonable attempts to provide accurate repair costs given the extent of the damage. In my opinion, it should not go without consideration that the current labor shortage and high demand on the time of skilled vendors and contractors across our state, coupled with the sheer scale of damage as demonstrated in the extensive photographic evidence submitted by the respondent, that in some instances, 14 calendar days may simply not suffice in rare situations where documented efforts have been made to assess damage accurately, as well as communicate transparently and in good faith with

the tenants. I found that based on the evidence submitted by the respondent, which the tenants offered no rebuttal to, that the tenants demonstrated a wanton disregard for the respondent's property, which may very well exceed the amount of the deposit. It is my opinion that, based on the testimony and evidence, the tenants exploited the specificity of the ordinance despite being responsible for the damage. Ultimately, I concur with the Board's decision to return the security deposit based on failure to notify, and I concur with the Board's decision to retain jurisdiction over the case, based primarily on the filing timeline.

/s/ Evan Litwin
Evan Litwin