

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

**In re: Request for Hearing of CHRYSTINA)
 BONELLI Regarding Withholding of) Security Deposit Appeal
 Security Deposit by KATHRYN and)
 MERLE SCHLOFF for Rental Unit at)
 51 Loomis St, Apt. 2)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on September 21, 2020; the hearing was held virtually via Zoom. Board Chair Josh O’Hara presided. Board Members Olivia Pena, Betsy McGavisk and Charlie Gliserman were also present. Petitioner Chrystina Bonelli was present and testified. Respondents Kathryn and Merle Schloff were also present and testified. Also appearing and testifying as a witness was Don Bonelli.

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 Kathryn and Merle Schloff are the owners of a rental unit, 51 Loomis St, Apt. 2, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Chrystina Bonelli moved into the rental unit with a written lease which ran from June 1, 2019 to May 31, 2020.
3. Petitioner paid a security deposit of \$685.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner sublet her room in the apartment beginning in January 2020. The

sublessee vacated the apartment on May 31, 2020 at the end of the lease term.

5. On June 8, 2020, respondents sent petitioner a statement indicating that \$430 of her deposit was being withheld for unpaid rent (\$400) and the removal of furniture left in the apartment (\$30). Respondents returned \$269.00 to petitioner. The written statement did not inform petitioner of her right to appeal the withholding of the deposit to this Board.

6. Interest in the amount of \$14.00 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. *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 Chrystina Bonelli is entitled to recover from respondent Kathryn and Merle Schloff the following amounts:

- a) \$430.00 of the security deposit improperly withheld after June 14, 2020; and
- b) Additional interest of \$0.003 per day from June 15, 2020 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 6th day of October, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Betsy McGavisk
Betsy McGavisk

Olivia Pena
Olivia Pena
/s/ Charlie Gliserman
Charlie Gliserman