

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

**In re: Request for Hearing of NURIT ELBER,)
ELLA RACKERS, SIMON DONOWAY,)
And BRANDON BORAS Regarding)
Withholding of Security Deposit by) Security Deposit Appeal
DIAMOND APARTMENTS for Rental)
Unit at 242 So. Winooski Ave, #5)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on September 8, 2020; the hearing was held virtually via Zoom. Board Chair Josh O'Hara presided. Board Members Patrick Murphy, Olivia Pena, Betsy McGavisk and Charlie Gliserman were also present. Petitioner Brandon Boras was present and testified; Mr. Boras represented all the tenants at the hearing. Respondent Diamond Apartments was represented at the hearing by Mike and Elmira Shea who 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 Diamond Apartments is the owner of a rental unit, 242 So. Winooski Avenue, #5, in the City of Burlington which is the subject of these proceedings. Mike and Elmira Shea manage the property.
2. Petitioners Nurit Elber, Ella Rackers, Simon Donoway and Brandon Boras moved into the rental unit with a written lease which ran from June 1, 2019 to May 25, 2020. Monthly rent was \$1800.00.
3. Petitioners paid a security deposit of \$1800.00 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 25, 2020.

5. On June 8, 2020, respondent sent a written statement to petitioners in conformance with ordinance requirements. Said statement itemized deductions of \$1876.40; petitioners disputed some of the deductions. None of the deposit was returned to petitioners. Interest in the amount of \$3.84 was credited to the deposit.

6. Both parties testified with respect to the scratched floors which appeared as a \$900.00 deduction on the itemized statement. Prior to the tenants moving into the unit, all new floors were installed in it. Respondents testified there were large scratches in two areas – the living room and one of the bedrooms; in order to repair the damage, respondent testified the boards need to be replaced. The wood floor is not a type of floor that can be sanded and refinished; the boards are prefinished and then installed. Woodline Floors estimated the cost to replace the boards is \$900.00. Respondents submitted photos as evidence of the damage, but the Board was not able to see the damage in the photos. Petitioners testified there was a couch and a bed located where respondents said the damage occurred.

7. Both parties testified with respect to the water bill which appeared as an \$80 deduction (an estimate) on the itemized statement. It appears both parties paid the water bill. Prior to moving out, respondents instructed petitioners to provide them with evidence that the final water bill was paid. Petitioners did not do that so \$80.00 was withheld from the deposit and respondents paid the bill.

8. Petitioners disputed the cost to repair nail holes in the apartment. There were 2 charges related to the nail holes: one for the cost to do the work (\$300) and one for

supplies (\$120). When petitioners moved into the unit the walls had been freshly painted. At the end of the tenancy there were nail holes in the walls of the master bedroom and living/kitchen area beyond what one would expect from normal wear and tear. The cost to patch and paint was \$300.00. In addition, the cost of materials (rollers, paint brushes, tape, sand paper and time to get the materials) was \$120.00.

Conclusions of Law

9. 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.

10. 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.

11. 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). Timely notice was provided.

12. Section 18-120(c) of the Minimum Housing Code permits a landlord to retain all or part of the security deposit for the actual cost to repair damage beyond normal wear and tear which is attributable to the tenant in order to maintain the condition and habitability of the unit, for nonpayment of rent, for nonpayment of utility or other charges the tenant was required to pay, and for expenses required to remove from the rental unit articles abandoned by the tenant. Section 18-2 defines normal wear and tear as

the deterioration which occurs, based upon the reasonable use for which the dwelling unit or rooming unit is intended, without negligence, carelessness, accident or abuse of the premises or supplied equipment or appliances by the occupant or members of his household or their invitees or guests.

In *Mongeon Bay Properties, LLC v. Mallets Bay Homeowner's Ass'n*, the Vermont Supreme Court elaborated on the contours of the normal-wear-and-tear concept. The Court explained that the analysis will examine: 1) whether the tenant made reasonable use of the property; 2) the type of property, as well at its context and use; and 3) whether the tenant took reasonable steps to avoid damage to the property. 2016 VT 64, ¶¶ 32-37, 202 Vt. 434, 149 A.3d 940.

13. Respondent deducted \$900.00 from the deposit for scratches in the wood floor. Respondents maintained that the scratches were not normal wear and tear. The scratches described by respondent appear to line up with where a sofa was located in the living room and where a bed frame was located in a bedroom. The photos submitted by respondent in support of the deduction didn't show the damage. Taking into account the Court's analysis of what normal wear and tear means, the Board cannot say that the

damage was beyond normal wear and tear. Petitioners made reasonable use of the property as tenants; petitioners, like any tenants, had numerous pieces of furniture in an apartment. There was no evidence suggesting that petitioners were warned about taking particular care with any furniture placed on the wood floors. Therefore, the Board concludes the deduction was not proper.

14. Based on the evidence and testimony, the Board concludes the deduction for an unpaid water bill was proper. When petitioners vacated the unit they did not provide respondents with a statement showing they had paid the water bill; when respondents checked with the water department there was still an outstanding balance which they paid.

15. Based on the evidence and testimony, the Board finds the deduction to repair and paint the nail holes was proper as the number of nail holes was beyond normal wear and tear. However, the Board concludes the deduction of \$120 for materials was not proper. The materials for which petitioners were charged (paint brushes, tape, sand paper, as well as the time it took to get them) are part of the cost of doing business as a landlord. The materials are not specific to painting and patching walls in this particular unit, but can be used again and again in other units.

Order

Accordingly, it is hereby ORDERED:

16. Petitioner Brandon Boras, as the representative for all the tenants, is entitled to recover from respondent Diamond Apartments the following amounts:

a) \$1,020.00 of the principal amount of the security deposit improperly withheld after June 8, 2020; and

b) Additional interest of \$0.007 per day from June 9, 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

/s/ Patrick Murphy

Patrick Murphy

/s/ Olivia Pena

Olivia Pena

/s/ Charlie Gliserman

Charlie Gliserman