



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: 4/20/2021

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O’Hara
Josh O’Hara
Board Chair

cc: Christophe Byaduniya
Cathy Kelly
Ahmad Khan

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

**In re: Request for Hearing of CHRISTOPHE)
BYADUNIYA Regarding Withholding of) Security Deposit Appeal
Security Deposit by ZOF LLC for Rental)
Unit at 1357 North Avenue)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on April 5, 2021; the hearing was held virtually via Zoom. Board Chair Josh O’Hara presided. Board Members Patrick Murphy and Charlie Gliserman were also present. Petitioner Christophe Byaduniya was present and testified. Respondent ZOF LLC was represented at the hearing by Ahmad Khan who testified. Also present was Baudouin Mulolo who served as interpreter for Christophe Byaduniya and Cathy Kelly.

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 ZOF LLC is the owner of a rental unit, 1357 North Avenue, in the City of Burlington which is the subject of these proceedings. Ahmad Khan manages the property.
2. Petitioner Christophe Byaduniya moved into the rental unit with a written lease which ran February 1, 2020 to January 31, 2021.
3. Petitioner paid a security deposit of \$1,500.00 to respondent. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on January 8, 2021, in accordance with when he told Ahmad Khan he would be out of the unit. However, Mr. Khan testified that petitioner was out of the unit on January 11, 2021 and the key was returned to him on January 12, 2021. The Board

finds the date of vacating to be January 11, 2021 – the date which Mr. Khan testified was the day petitioner vacated the unit.

5. On January 27, 2021 Ahmad Khan sent a written statement to petitioner itemizing deductions from the deposit. Said statement itemized deductions totaling \$2950.00. None of the deposit was returned. In addition, Mr. Khan did not credit interest to the deposit.

6. Respondent’s statement of deductions did not include notice of the tenant’s right to request a hearing before this Board to dispute the withholding of the deposit. Ahmad Khan testified he was unaware of the requirement to provide such notice in the statement of deductions.

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 send the itemized statement within 14 days of the vacate date and 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.

11. Petitioner is 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. Respondent did not credit interest to the deposit because the damages exceeded the amount of the security deposit and any interest that accrued. Nonetheless, the Board notes that the written statement should reflect the

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

amount of interest accrued during the tenancy so that a tenant knows interest was credited to the deposit.

Order

Accordingly, it is hereby ORDERED:

12. Petitioner Christophe Byaduniya is entitled to recover from respondent ZOF LLC the following amounts:

a) \$1,500.00 of the principal amount of the security deposit improperly withheld after January 25, 2021;

b) Interest in the amount of \$3.59 on the entire deposit for the period February 1, 2020 to January 25, 2021; and

c) Additional interest of \$0.01 per day from January 26, 2021 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 20th day of April, 2021.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Patrick Murphy
Patrick Murphy

/s/ Charlie Gliserman
Charlie Gliserman