



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 8/24/22

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk
Board Vice Chair

cc: Erin Cairns, Fiona Maruca, Allegra Klein
Mike Wurth

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

**In re: Request for Hearing of ERIN CAIRNS,)
FIONA MARUCA and ALLEGRA)
KLEIN Regarding Withholding of) Security Deposit Appeal
Security Deposit by MIKE WURTH for)
Rental Unit at 304 S. Winooski Ave, #1)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on July 25, 2022; the hearing was held remotely via Zoom . Board Vice Chair Betsy McGavisk presided. Board Members Evan Litwin and Josh Wronski were also present. Petitioners Erin Cairns, Fiona Maruca and Allegra Klein were present and testified. Respondent Mike Wurth 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 Mike Wurth is the owner of a rental unit, 304 South Winooski Ave, Apt. 1, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Erin Cairns, Fiona Maruca and Allegra Klein moved into the rental unit with a written lease which ran from June 1, 2021 to May 25, 2022. Monthly rent was \$2,200.00.
3. Petitioners paid a security deposit of \$2,200.00 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, 2022.
5. On June 8, 2022, respondent sent a statement, by certified mail, to petitioners informing them that \$500.00 of the deposit was being withheld for cleaning; respondent included

a copy of the invoice for cleaning. Respondent returned \$1,700.00 of the deposit to petitioners. The statement included the following notice: "If you disagree with this you may appeal with the Burlington Housing Board of Review."

6. Interest was not credited to the deposit.

7. Petitioners disputed the withholding of their deposit on the basis that the apartment was at least as clean as it was when they moved into it. The parties disputed the condition of the apartment when petitioners moved into it. Respondent testified that the apartment was clean and pointed to the move-in inspection list signed by him and 2 of petitioners. The checklist notes that the apartment was clean when petitioners moved into it. Petitioners testified they didn't know they should indicate that items were not clean even though the checklist specifically references that items are clean and there are no notations indicating otherwise. Petitioners testified that the apartment was not clean when they moved into it and they scrubbed everything when they moved in.

8. Prior to petitioners' move out date, respondent provided a cleaning checklist to them. Respondent testified the apartment was spotless when they moved in; respondent made it very clear to petitioners that he expected the apartment to be very clean when they moved out. Respondent testified that one of the bedrooms was spotless, but the other two were not. In addition, he stated that the stovetop was filthy, the oven was not clean, one of the bathroom showers was dirty and that windows, walls, and baseboards throughout the apartment were dirty. Petitioners testified they respected the property and kept the apartment clean, including deep cleaning it periodically. Nonetheless, they acknowledged that when they moved out they only cleaned the apartment to the condition in which they found it (which they testified was dirty).

9. Respondent found a cleaning service online; he had never used the service before and based his hiring decision on the online ratings. The cleaning service charged a flat rate of

\$500.00 to clean the apartment. Respondent did not know how many cleaners were in the apartment. The invoice for cleaning only indicates the job took 3 hours not how many people were cleaning; there is also a notation to deep clean due to pets. (Petitioners had a cat.)

10. The Board finds respondent to be very candid and honest with respect to the withholding of the deposit. There were repairs he made in the apartment that he didn't withhold the security deposit for because he considered it to be normal wear and tear. Petitioners acknowledged that they didn't leave the apartment as clean as they could have or as clean as respondent told them he wanted it to be.

Conclusions of Law

11. 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.

12. 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.

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). Respondent returned the security deposit with an itemized statement which included notice of petitioners' opportunity to appeal the deductions to this Board; however, that statement failed to include the 30-day deadline to appeal to this Board.

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 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. The Board concludes respondent's notice of withholding to petitioners was not proper as it did not contain the 30-day deadline for appealing. Therefore, 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

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

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.

16. The Board expresses no opinion about the availability of relief in other legal venues.

Order

Accordingly, it is hereby ORDERD:

17. Petitioners Fiona Maruca, Allegra Klein and Erin Cairns are entitled to recover from respondent Mike Wurth the following amounts:

a) \$500.00 of the principal amount of the security deposit improperly withheld after June 8, 2022;

b) Interest in the amount of \$5.57 on the entire deposit for the period June 1, 2021 to June 8, 2022; and

c) Additional interest of \$0.003 per day from June 9, 2022 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 24th day of August, 2022.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Evan Litwin
Evan Litwin

Josh Wronski