



**HOUSING BOARD OF REVIEW**

**City of Burlington**

149 Church Street Room 11  
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(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: Francesca Carasi-Schwartz  
Full Circle Property Management

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

**In re: Request for Hearing of FRANCESCA )  
CARASI-SCHWARTZ Regarding )  
Withholding of Security Deposit by ) Security Deposit Appeal  
BUDCO DEVELOPMENT, LLC for )  
Rental Unit at 47 S. Williams St., Apt. 311)**

**DECISION AND ORDER**

The above-named hearing came before the Housing Board of Review on September 6, 2022; the meeting was held remotely via Zoom. For purposes of expedition, Board Members Olivia Taylor and Josh Wronski were appointed Hearing Officers to hear and decide the above – referenced matter. Petitioner Francesca Carasi-Schwartz was present and testified. Respondent Budco Development, Inc., was represented at the hearing by Stephanie Gilbert 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 Budco Development, LLC, is the owner of a rental unit, 47 S. Williams Street, Apt. 311, in the City of Burlington which is the subject of these proceedings. Stephanie Gilbert from Full Circle Property Management (“Full Circle”) manages the property.
2. Petitioner and Kai Boyd moved into the rental unit on June 1, 2020 under the terms of a written lease. Monthly rent was \$1550.00.
3. Petitioner and Kai Boyd paid a security deposit of \$1550.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on May 23, 2022.

5. On June 6, 2022, respondent returned the deposit to petitioner and Kai Boyd at petitioner's forwarding address. The accompanying statement noted no deductions from the deposit. Respondent returned \$1552.00 to petitioner. The check was made payable to petitioner and Kai Boyd. Petitioner did not receive the statement. At the time of the hearing, the check and statement had not been returned to respondent by the post office as undeliverable.

6. Between June 17 and June 30, petitioner and Addy Nunez (a property manager at Full Circle) emailed back and forth about the missing check and having a new check issued. Full Circle was reluctant to issue a new check when the whereabouts of the first check was unknown. Petitioner was frustrated that a new check couldn't just be issued. Finally, on June 30, Full Circle agreed to issue a new check to petitioner which was to be picked up at their office on July 1.

7. On July 1, 2022, petitioner picked up a new check at Full Circle's office. The check was made payable to petitioner and Kai Boyd. When petitioner tried to deposit the check into her account, the bank told her both parties needed to sign the check in order to cash or deposit it.

8. On July 3, 2022, petitioner emailed Full Circle again and told them she was unable to deposit the check because it was made payable to her and Kai Boyd. Petitioner explained she was unable to have Kai Boyd sign the check. Petitioner requested that a new check, made payable to her alone, be mailed to her as soon as possible. Addy Nunez replied that in order for a new check to be issued, petitioner would need to return the check and pay a stop payment fee of \$36.00. Petitioner stopped communicating with Full Circle after receiving Addy Nunez's reply because she was frustrated about having to fix what she believed were errors made by Full Circle. Rather, petitioner filed a request before this Board to hear the dispute.

9. At the time of the hearing, the check made payable to petitioner and Kai Boyd that was issued on June 30, and picked up by petitioner on July 1, was still in petitioner's possession. Stephanie Gilbert stated that in order to issue a new check, petitioner either needed to return the check issued on June 30 or to pay a stop payment fee on it.

10. Petitioner argued that the deposit was willfully withheld and requested that respondent be ordered to pay double damages. The basis of petitioner's argument is that respondent has not returned the deposit and that respondent callously disregarded her requests that a new check be issued. Stephanie Gilbert denied that the deposit was willfully withheld, stating that Full Circle had, in fact, been trying to return the deposit to petitioner; then, petitioner stopped communicating with them.

### **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 deposit with a statement to petitioner in accordance with ordinance requirements. However, the check and statement were never delivered to petitioner, and at the time of the hearing, had not been returned to respondent by the post office as undeliverable. The Hearing Officers conclude that respondent followed the ordinance, and through no fault of theirs, the check and statement were lost in the mail.

14. There is no dispute that petitioner and Kai Boyd are entitled to the return of the full deposit, plus interest – there were no deductions from the deposit. Respondent tried to return the deposit twice, but the first check was lost in the mail and petitioner was unable to cash or deposit the second check. The second check is still in petitioner's possession. Respondent is ready to issue another check as soon as the check in petitioner's possession is returned to them or petitioner pays a stop payment fee. The Hearing Officers conclude the check in petitioner's possession must be returned to Full Circle and upon receipt of the check respondent must immediately issue a new check and will so order.

15. Petitioner argued that the deposit was willfully withheld. If the failure to return a security deposit with a statement within 14 days is willful, a landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(b)(e). Petitioner has also moved for double damages, alleging respondents' failure to

return the security deposit was willful. As the Superior Court has recently held, “willfully” for purposes of the ordinances can mean violating the ordinance by design, by intention, by being obstinate or indifferent to the requirements of the law. *Harrington v. McCauley*, 1095-12-19 Cncv, slip op. at 1-2 (Vt. Sup. Ct. Feb. 4, 2020). The Hearing Officers conclude the deposit was not willfully withheld. Respondent returned the deposit and statement to petitioner on June 6. When respondent learned the deposit had not been received, they issued a new check which petitioner picked up at the offices of Full Circle. Respondent has been attempting to return the deposit in good faith.

**Order**

Accordingly, it is hereby ORDERED:

16. Petitioner Francesca Carasi-Schwartz must return the check issued on June 30, 2022 to Full Circle by certified mail.

17. Upon Full Circle’s receipt of the check issued on June 30, 2022, respondent must immediately issue a check in the amount of \$1552.00 (the full amount of the deposit plus interest) made payable to Francesca Carasi-Schwartz and mail it by certified mail to Francesca Carasi-Schwartz.

DATED at Burlington, Vermont this 19<sup>th</sup> day of October, 2022.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Olivia Taylor  
Olivia Taylor  
Hearing Officer

/s/ Josh Wronski  
Josh Wronski  
Hearing Officer