



**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 9/29/21

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara  
Josh O'Hara  
Board Chair

cc: Mallory Craig  
Macson Enterprises c/o Neville Companies

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

**In re: Request for Hearing of MALLORY            )**  
**CRAIG Regarding Withholding of         ) Security Deposit Appeal**  
**Security Deposit by MACSON             )**  
**ENTERPRISES LLC for Rental Unit at     )**  
**188 Cliff Street, #6                     )**

**DECISION AND ORDER**

The above-named hearing came before the Housing Board of Review on July 19, 2021 and was continued on September 7, 2021. Board Member Charlie Gliserman presided over the hearing on September 7, 2021 and was present at the hearing on July 19, 2021. Board Members Olivia Taylor and Evan Litwin<sup>1</sup> were also present at both hearings. Petitioner Mallory Craig was present and testified. Respondent Macson Enterprises LLC was represented at the hearings by Coty Fitzgerald who testified. Also appearing and testifying as a witness was David Budnick.

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 Macson Enterprises LLC is the owner of a rental unit, 188 Cliff St, Unit 6, in the City of Burlington which is the subject of these proceedings. Coty Fitzgerald from Neville Companies (a property management company) manages the property.
2. Petitioner Mallory Craig moved into the rental unit with a written lease which ran from October 1, 2020 to September 24, 2021. Monthly rent was \$910.00.
3. Petitioner paid a security deposit of \$910.00 and a pet deposit of \$455.00 (a total of \$1365.00) to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.

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<sup>1</sup> Evan Litwin attended the hearing on September 7, 2021 remotely.

4. Petitioner vacated the apartment on May 19, 2021.

5. On May 26, 2021, respondent sent a written statement to petitioner in accordance with ordinance requirements. Said statement itemized one deduction from the deposit: \$128.00 for a lock out charge from April 21, 2021. Interest in the amount of \$0.93 was credited to the deposit; respondent also returned \$352.20 for rent reimbursement. Respondent returned a total of \$1590.13 (\$1237.93 in deposit monies and \$352.20 for reimbursement of rent) to petitioner.

6. Petitioner disputed the deduction of \$128.00 and argued that the failure to return that money was willful. The deduction stemmed from an incident on March 29, 2021 at approximately 5:45 p.m. when petitioner was locked out of the apartment. She called Neville Companies and they sent a maintenance person to the apartment to let her into it. The next morning petitioner emailed Coty Fitzgerald and requested a new key to the apartment as she was unable to find hers; Mr. Fitzgerald responded that they would make a new key for her and the charge for it was \$25.00. Petitioner paid the charge on May 4, 2021.

7. In April, Neville Companies sent an invoice to petitioner indicating that she owed them \$267.51 stemming from being locked out of her apartment. The statement indicated there was a charge of \$197.51 (labor and mileage reimbursement) for the maintenance call on March 29 and a charge of \$70.00 (labor and mileage reimbursement) to deliver the replacement key to her. Petitioner had not yet paid the \$25 charge for the new key when the invoice was sent.

8. Upon receiving the invoice for lock out charges, petitioner called Coty Fitzgerald about the charges; petitioner disputed the charges as she had been told that the cost to replace the key was \$25.00. Mr. Fitzgerald explained the charges as being the hourly fee noted in the lease (\$64.00) to respond to the maintenance call and the cost of the key (which petitioner had not yet paid). In addition, Coty Fitzgerald explained that since the maintenance call occurred after

hours, the call was billed at a higher “after hours” hourly rate of \$96.00 (time and a half). In a follow-up email to petitioner on April 28, Mr. Fitzgerald confirmed the hourly charges; in addition, he told petitioner that if she was unable to make the payment, it would be deducted from her security deposit. In an email dated May 5, 2021 to Coty Fitzgerald, petitioner disputed the charges again and argued that withholding the charges from her deposit was not proper under city ordinance.

9. Petitioner and Coty Fitzgerald had additional back and forth exchanges about the lock out charges. Finally, in an email to petitioner dated May 6, 2021, Mr. Fitzgerald stated the lock out charge would be reduced to \$128 (2 hours of labor at \$64/hour as provided in the lease) and \$25 for the replacement key. Petitioner paid the \$25 charge for the replacement key, but did not pay the charge for labor.

10. Petitioner argued that respondent willfully withheld \$128 from the deposit. Petitioner argued that Coty Fitzgerald knew there was no provision in the lease allowing for a higher rate of charge for after-hours maintenance calls, even though he initially told her there was. Coty Fitzgerald denied the withholding of the deposit was willful. Rather, he believed the deduction was appropriate because it was a fee that was supposed to be paid directly to respondent, but wasn't. In addition, when petitioner pointed out that there was no provision in the lease for a higher hourly rate for after-hour maintenance calls, he acknowledged the error and adjusted the charge. The Board finds Coty Fitzgerald's testimony that he believed the deduction was allowed under the city ordinance and that he made an honest error with respect to the hourly rate of charge to be convincing.

## **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). Proper notice was provided.

14. Under city ordinance an owner can retain all or part of a deposit for the actual cost to repair damage beyond normal wear and tear, for unpaid rent, for nonpayment of utility or other charges which the tenant was required to pay directly to the landlord or to a utility, and for expenses required to remove abandoned articles from the rental unit. Minimum Housing Code Sec. 18-120(c). Based on the evidence and testimony, the Board concludes that the deduction of \$128.00 was not a damage as contemplated under city ordinance, and thus, will not allow it.

15. 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 respondent's withholding of \$128 from her 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). Petitioner argued that Coty Fitzgerald knew the lease did not contain a higher hourly rate of charge for after-hours maintenance calls and knew the charge was not proper, but deducted money from her deposit for the maintenance call anyway; she argues that his actions demonstrate a willful withholding of the deposit. Coty Fitzgerald provided credible testimony that he believed the deduction to be proper under the ordinance and that he made a mistake with regard to the hourly rate of charge for the maintenance call. Consequently, the Board concludes that the withholding of part of the deposit was not willful; therefore, we will not award double damages.

### Order


Accordingly, it is hereby ORDERED:

16. Petitioner Mallory Craig is entitled to recover from respondent Macson Enterprises LLC the following amounts:

- a) \$128.00 of the deposit improperly withheld after June 2, 2021; and
- b) Additional interest of \$0.0009 per day from June 3, 2021 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 29<sup>th</sup> day of September, 2021.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Charlie Gliserman

/s/ Evan Litwin  
Evan Litwin

/s/ Olivia Taylor  
Olivia Taylor