HOUSING BOARD OF REVIEW

City of Burlington

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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 9/22/21

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

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

cc: Connor Cronin
Terrance Granahan

CITY OF BURLINGTON, VERMONT
HOUSING BOARD OF REVIEW

In re: Request for Hearing of CONNOR CRONIN Regarding Withholding of Security Deposit by TERRANCE GRANAHAN for Rental Unit at 54 Greene Street	)))))	**Security Deposit Appeal**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on August 23, 2021. Board Chair Josh O'Hara presided. Board Members Betsy McGavisk, Charlie Gliserman, Evan Litwin and Olivia Taylor were also present. Petitioner Connor Cronin was present and testified. Respondent Terrance Granahan testified via telephone conference call. Also appearing and testifying as witnesses were Joshua Bechhoefer and Jason Bushey.

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 Terrance Granahan is the owner of a rental unit, 54 Greene Street, in the City of Burlington which is the subject of these proceedings. Jason Bushey manages the property for respondent.

2. Petitioner Connor Cronin and his roommates, Joshua Bechhoefer and Tony Agustin, moved into the rental unit with a written lease which ran from June 1, 2020 to May 30, 2021. Petitioner represented the interests of all the tenants. Monthly rent was $3,000.00.

3. Petitioner and his roommates paid a security deposit of $3,000.00 to respondent. Petitioner was to receive back their security deposit at the end of the lease minus any amounts withheld for damages.

4. Petitioner and his roommates vacated the apartment on May 30, 2021 when the lease terminated.

5. On June 5, 2021, respondent sent petitioner a statement of deductions from the deposit. Said statement itemized deductions of $1281.45. However, respondent only withheld $667.59 from the deposit. In addition, respondent's statement indicated there was some damage to the unit for which respondent did not withhold any money; in addition, respondent did not withhold any money for Jason Bushey's labor to make repairs and clean up garbage.

6. Interest in the amount of $64.00 was credited to the deposit.

7. In addition to disputing the deductions, petitioner argued that respondent did not provide proper notice. There is no dispute that the itemized statement did not include notice of petitioner's right to request a hearing before this Board within 30 days to dispute the withholding of the deposit, as required by city ordinance. Respondent argued that his statement, "If you have any questions, call me directly at 617.504.8954," meant the same thing because it implied that petitioner could appeal the deductions. Respondent testified that when he spoke to petitioner about the deductions and asked what he believed was fair, petitioner just stated he wanted $1200 returned to him. Respondent stated he was aware that a tenant could appeal the withholding of the deposit, but was not aware that there was specific language that needed to be provided. In addition, respondent testified that he spoke to an attorney who advised him that the language in his itemized statement fulfilled the notice requirement. Jason Bushey, who has been managing properties for approximately 25 years, testified that he was unaware of the requirement to include notice of the opportunity to request a hearing in the itemized statement.

8. Petitioner also argued that the deposit was willfully withheld. The basis of petitioner's argument is twofold: 1) as a longtime landlord, respondent should be aware of the

requirements under the ordinance and 2) respondent came up with deductions to make improvements to the unit and as a way to bully the tenants into being satisfied with the amount of the deposit returned. Petitioner viewed the itemized statement as an intimidation tactic because it listed a set of deductions totaling $1281.45, indicated there were additional costs to repair damages for which petitioner was not charged, and then indicated respondent was settling for $667.59 as a deduction. Petitioner believed this method of setting out the deductions was an intimidation tactic meant to dissuade him from disputing the deductions, and thus, evidenced a willful withholding of the deposit. Respondent denied trying to intimidate or bully petitioner; he believed the itemized statement was his attempt at being transparent and trying to be fair about the deductions. Jason Bushey testified he was not aware of the notice requirement and stated the itemized list of deductions exhibited the fairness with which they were taken. Mr. Bushey testified it is never his intent to withhold a deposit; he believed petitioner was trying to avoid his responsibility for damage in the unit on a technicality (ie, the failure to provide notice of the opportunity to request a hearing). Respondent and Jason Bushey also argued that there was no harm in their failure to provide the notice as petitioner found the information and was able to request a hearing.

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 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).

12. 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. There is no dispute that respondent's

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

statement did not contain notice of the right to appeal to the Housing Board of Review. The Board rejects respondent's argument that the statement "[i]f you have any questions, call me directly..." is synonymous with the notice requirement under the ordinance. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

13. 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 his 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). Respondent testified that he received advice from an attorney who told him his statement directing a tenant to call him with any questions met the intent of the notice requirement under the ordinance. Jason Bushey testified he was unaware of the notice requirement and had he known about the requirement it would have been included in the statement. While respondent may have been ignorant and ill-advised, the Board concludes he was not being willful when he withheld part of the deposit.

Order

Accordingly, it is hereby ORDERED:

14. Petitioner Connor Cronin is entitled to recover from respondent Terrance Granahan the following amounts:

a) $667.59 improperly withheld after June 13, 2021; and

b) Additional interest of $0.005 per day from June 14, 2021 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 22nd day of September, 2021.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Charlie Gliserman
Charlie Gliserman

/s/ Evan Litwin
Evan Litwin

Olivia Taylor

Josh O'Hara, Board Chair, concurring. I agree with the Board's conclusion that the tenants in this case are entitled to the return of the remainder of their security deposit due to the landlord's failure to include a statement of their right to appeal to this Board on the security-deposit transmittal letter. I also agree with the Board's conclusion that the tenants are not entitled to double damages. I write separately to express my opinion that in future cases the Board should consider a long-term landlord's experience renting in Burlington as a factor weighing in favor of finding a wrongful withholding to have been willful.

The inclusion of notice of a tenant's right to appeal a security-deposit withholding to this Board serves an important consumer-protection function. It is not a minor detail, or "technicality" to borrow Mr. Bushey's label. The City Council has selected this as the primary method by which tenants are to be advised of their appeal rights, and that makes sense. Every tenant by law must receive a notice of security-deposit withholding from the landlord, and it is reasonable both to require landlord to provide notice of appeal rights and to condition a landlord's ability to withhold on giving tenants notice of their rights. Without notice, an unknowing tenant would be left to choose between negotiating the return of their deposit with the landlord, or perhaps going to court, where the costs of filing a case and hiring a lawyer can be prohibitive, and where the procedure of even filing a claim can be daunting. As the tenants here point out, the landlord in this case, Mr. Granahan, in fact encouraged the tenants to negotiate with him instead of providing notice of the right to appeal to this Board.

Despite the importance of this notice, and despite many cases where the Board has ordered the return of withheld security deposits solely for lack of notice, landlords in Burlington continue to omit notice-of-appeal rights from security-deposit transmittal letters. Consequently, the Board must also frequently resolve requests for double damages, which are available when the wrongful withholding was willful. The Board has held that willfulness includes acts that are "voluntary and intentional, but not necessarily malicious," as well as acts of "inexcusable carelessness, whether the act is right or wrong." *In re Waine, et al*, Burlington Housing Bd. of Rev. (Sept. 17, 2019) (quoting Black's Law Dictionary (11th ed. 2019)) (internal quotes omitted).

The double-damages cases tend to fall into one of three categories. There are landlords who credibly testify that they are inexperienced with Burlington's ordinances, resulting in a mistaken failure to provide notice. See *In re Gallucci, et al*, Burlington Housing Bd. of Rev. (Aug. 25, 2021). There are others who are well-aware of the obligation to provide notice and simply disregard it. See *In re Waine, et al*. Those cases aren't hard to decide.

Other landlords are like Mr. Granahan and his property manager, Mr. Bushey: experienced Burlington landlords and landlords' representatives. They have either been in the business of renting apartments in Burlington for a long time (Mr. Bushey, for example, has 25 years of experience in the property management business in Burlington; Mr. Granahan has considerable experience as a Burlington landlord), or they are landlords who rent many units in Burlington. Whether due to a long time in the business or due to volume, these landlords have turned a lot of apartments over. They have experience returning security deposits. They consult with legal counsel to help manage their businesses. Even so, when some of the landlords and property managers in this category appear before the Board, they also often claim ignorance of the requirement to provide tenants with notice of the right to appeal to this Board.

That happened in this case. Both Mr. Granahan and Mr. Bushey testified that they did not have any knowledge of the notice requirement. To me, it defies common sense that a landlord would conduct the business of renting an apartment without first knowing landlords' obligations to tenants. It makes even less sense for a landlord or property manager with decades of experience, or many units under management, to be unaware of the notice requirement. For what it's worth, it would seem doing business in that way didn't make sense to Mr. Granahan or Mr. Bushey either. Both testified to having consulted with lawyers in the past to understand their legal obligations.

And yet, this rule escaped them, despite its importance. This makes little sense unless, as some tenants have argued, a landlord would prefer to handle security-deposit issues informally without involving this Board. Certainly, Mr. Granahan's security-deposit return letter invited just that. Had I been left to decide this case on that letter and Mr. Bushey's testimony alone, I likely would have voted for double damages. I found Mr. Granahan's testimony that he received very poor legal advice from a lawyer friend credible, however, and therefore I do not support double damages in this case.

In the future, I encourage the Board to ask probing questions of experienced landlords who fail to provide tenants with notice of their appeal rights. Omission of those rights from a security-deposit return letter does not make good business sense under Burlington's ordinance, and it is hard to believe that landlords who have rented apartments for a long time or who manage many properties would routinely risk forfeiting the option to retain a security deposit. If there is a good reason a landlord did not include the notice, the Board should discover it. Simply not being aware may not be a good enough answer going forward.

/s/ Josh O'Hara
Josh O'Hara