



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 10/19/22

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk
Board Chair

cc: Kayla Davis
Matt Boudreau

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

**In re: Request for Hearing of KAYLA DAVIS)
Regarding Withholding of Security) Security Deposit Appeal
Deposit by 137 NORTH WINOOSKI)
AVE, LLC for Rental Unit at 137 North)
Winooski Avenue, #1)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on October 3, 2022; the meeting was held remotely via Zoom. Board Vice Chair Betsy McGavisk presided. Board Members Evan Litwin, Charlie Gliserman, Josh Wronski and Olivia Taylor were also present. Petitioner Kayla Davis was present and testified. Respondent 137 North Winooski Ave., LLC was represented at the hearing by Matt Boudreau 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 137 North Winooski Ave., LLC is the owner of a rental unit, 137 N. Winooski Avenue, #1, in the City of Burlington which is the subject of these proceedings. Matt Boudreau manages the property.
2. Petitioner Kayla Davis moved into the rental unit with a written lease which ran from July 1, 2021 to June 30, 2022. According to said lease, monthly rent was \$1650.00.
3. Petitioner paid a security deposit of \$1850.00 to respondent. The written lease does not indicate that there was a pet in the apartment or that an additional payment was required at the beginning of the lease for a pet. 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 June 24, 2022.

5. On July 6, 2022, respondent sent petitioner a statement indicating that \$245.00 of the deposit was being withheld for cleaning. The written statement did not inform petitioner of her right to request a hearing to this Board within 30 days of receipt of the statement. Respondent returned \$1605.00 of the deposit to petitioner.

6. Interest was not credited to the deposit. Respondent's statement submitted into evidence acknowledged their oversight in not returning interest on the deposit. The statement indicated that interest in the amount of \$3.70 should have been returned, and would be returned at the conclusion of this hearing.

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 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).

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. Respondent did not inform petitioner of her right to dispute the withholding of the deposit to this Board within 30 days of receipt of the landlord's statement. Therefore, the Board concludes that respondent forfeited the right to withhold any part of the deposit.

11. Under city ordinance a security deposit may not exceed the amount of one month's rent; however, an owner may also require an additional payment equal to half of one month's rent as a condition for allowing a tenant to have a pet in the rental unit during the tenancy. Minimum Housing Code Sec. 18-120(a). In this case, the amount of monthly rent was \$1650.00. Petitioner paid a security deposit of \$1850.00. The lease did not indicate that there was a pet in

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

the unit for which an additional deposit was collected. Respondent is hereby on notice as to the amount of a security deposit that can be collected from a tenant.

Order

Accordingly, it is hereby ORDERED:

12. Petitioner Kayla Davis is entitled to recover from respondent 137 North Winooski Avenue, LLC the following amounts:

- a) \$245.00 of the principal amount of the security deposit improperly withheld after July 8, 2022;
- b) Interest in the amount of \$3.70 on the entire deposit for the period July 1, 2021 to June 24, 2022 if it has not already been returned to petitioner; and
- c) Additional interest of \$0.002 per day from July 9, 2022 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 19th day of October, 2022.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Evan Litwin
Evan Litwin

/s/ Charlie Gliserman
Charlie Gliserman

/s/ Olivia Taylor
Olivia Taylor

/s/ Josh Wronski
Josh Wronski