

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

In re: Request for Hearing of MADALYN and)
GABRIELLE DePINTO Regarding)
Withholding of Security Deposit by JO ANN) Security Deposit Appeal
LAFAYETTE HOLDINGS for Rental Unit at)
2 Allen Street)

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on October 19, 2020; the hearing was held virtually via Zoom. Board Vice Chair Betsy McGavisk presided. Board Members Josh O’Hara, Patrick Murphy and Charlie Gliserman were also present. Petitioner Madalyn DePinto was present and testified. Respondent Jo Ann Lafayette Holdings was represented at the hearing by Jo Ann Lafayette and Adam Lafayette both of whom testified. Also appearing and testifying was Rebekah DePinto.

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 Jo Ann Lafayette Holdings is the owner of a rental unit, 2 Allen Street, in the City of Burlington which is the subject of these proceedings. Jo Ann Lafayette and Adam Lafayette manage the property.
2. Petitioners Madalyn and Gabrielle DePinto moved into the rental unit with a written lease which ran from August 1, 2019 to July 31, 2020. Monthly rent was \$1385.00.
3. Petitioners paid a security deposit of \$1385.00 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 July 31, 2020.

5. On August 12, 2020, respondent sent a statement to petitioners in accordance with ordinance requirements. Said statement itemized deductions of \$450.01 from the deposit. Interest was credited to the deposit. Respondent returned \$935.14 of the deposit to petitioners.

6. Petitioners disputed the deduction of \$232.65 for repairs and cleaning. Petitioners argued that most of the repairs (such as holes in the walls) were part of normal wear and tear. However, they did acknowledge being responsible for 2 dents in a bedroom wall and a dent in the living room closet. Petitioners disputed that any cleaning needed to be done. Rebekah DePinto testified that the apartment was clean when petitioners moved out. BTV Cleaning cleaned the apartment; their invoice indicates “cleaning for turnovers”. The bill for \$735 indicates they spent 21 hours cleaning the apartment. With respect to the holes in the walls, Jo Ann Lafayette testified that a few nail holes are normal wear and tear; however, an area with a lot of holes in the walls is beyond normal wear and tear. Jo Ann Lafayette counted 35 holes in the north bedroom’s walls.

7. Petitioners also disputed the \$45 deduction for extra, unbagged trash in the trash barrels. Petitioners put their recycling next to the trash barrels when they moved out, but they did not leave any unbagged garbage in the barrels. Jo Ann Lafayette just assumed petitioners left the unbagged garbage because all the other tenants in the building are long-time residents and they know trash must be bagged.

8. Other deductions from the deposit were not disputed.

9. Petitioners argued that the deposit was willfully withheld because they were charged for cleaning that did not need to be done and for repairs that were part of normal wear and tear. In response, Jo Ann Lafayette testified that petitioners were not charged for all the cleaning, just what was beyond normal wear and tear. With respect to the repairs, Jo Ann Lafayette testified

they were only charged for damages beyond normal wear and tear.

Conclusions of Law

10. 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.

11. 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.

12. 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. 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). Timely notice was provided.

13. Based on the evidence and testimony, the Board concludes that the deduction for cleaning was not proper. Petitioners cleaned the apartment before moving out and the bill for cleaning indicates the cleaning done was just for a turnover.

14. Based on the evidence and testimony, the Board concludes it was proper to deduct the cost to repair the 2 dents in the bedroom wall and the dent in the closet. The deduction for repairs was not itemized separately, but was part of the deduction for cleaning. Therefore, the Board concludes it was reasonable to deduct \$100 (2.5 hours at \$40/hr) from the deposit for repairs.

15. Based on the evidence and testimony, the Board concludes the deduction for extra trash was not proper. Respondent withheld money from petitioner's deposit on the assumption that the trash was left by petitioners. The extra trash cannot be found to be attributable to petitioners when it is based on an assumption only.

16. Petitioners argued that the deposit was willfully withheld. Sec. 18-120 of the Minimum Housing Code provides that if the failure to return a deposit with an itemized statement is willful, the landlord is liable for double the amount wrongfully withheld. Petitioners argued that the fact they were charged for cleaning at all, which in their minds did not need to be done, demonstrated willful withholding. Respondent did not deduct the actual cost to clean, but just a portion of it; Jo Ann Lafayette testified she only withheld money for damages beyond normal wear and tear. The Board concludes there is no evidence to support that the deposit was willfully withheld.

Order

Accordingly, it is hereby ORDERED:

17. Petitioners Madalyn and Gabrielle DePinto are entitled to recover from respondent Jo Ann Lafayette Holdings the following amounts:

a) \$177.65 of the principal amount of the deposit improperly withheld after August 14, 2020; and

b) Additional interest of \$0.001 per day from August 15, 2020 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 4th day of November, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Josh O'Hara
Josh O'Hara

/s/ Patrick Murphy
Patrick Murphy

/s/ Charlie Gliserman
Charlie Gliserman