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 1/24/20

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Michael Deedy
Edward Horgan

CITY OF BURLINGTON, VERMONT
HOUSING BOARD OF REVIEW

In re: Request for Hearing of MICHAEL DEEDY Regarding Withholding of Security Deposit by EDWARD HORGAN for Rental Unit at 161 Austin Dr, Unit 118) Security Deposit Appeal

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on January 6, 2020. Board Chair Josh O'Hara presided. Board Members Patrick Kearney, Patrick Murphy, Olivia Pena and Betsy McGavisk were also present. Petitioner Michael Deedy was present and testified. Respondent Edward Horgan testified via telephone conference call, as did his witness, Tom Davoran. Also appearing and testifying were Rebecca Murray and Tyler Antrum.

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 Edward Horgan is the owner of a rental unit, 161 Austin Drive, Unit 118, in the City of Burlington which is the subject of these proceedings. Respondent lives out of state and does not have a local agent designated for the property.

2. Petitioner Michael Deedy moved into the rental unit on September 1, 2016. Beginning on September 1, 2012 and continuing during petitioner's tenancy, the unit was occupied by several different groups of people. The lease for the last group of tenants (petitioner, Rebecca Murray, Elizabeth Backus and Andrew Choyce) expired on August 31, 2019. Monthly rent at the end of petitioner's tenancy was $2500.00.

3. The amount of the security deposit was in dispute. Respondent testified the amount of the deposit was $2300.00. However, petitioner and Rebecca Murray testified the amount of the

deposit was $2500.00 ($625.00/tenant). The lease indicates the amount of the security deposit was $2500.00. The Board finds the amount of the deposit was $2500.00. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.

4. Petitioner and all other tenants vacated the apartment on August 31, 2019.

5. On September 12, 2019, respondent sent petitioner a statement itemizing deductions from the deposit in accordance with ordinance requirements. Said statement itemized deductions totaling $12,051.00. None of the deposit was returned. The itemized statement indicates interest in the amount of $402.50 was credited to the deposit.

6. Petitioner disputed the deductions. The general basis of petitioner's appeal is twofold. First, respondent had not visited the apartment for several years and had no idea of the condition of the apartment as the unit rolled over from one group of tenants to another. Second, petitioner believes his security deposit is being used to make much needed repairs and upgrades to the unit because respondent intends to sell it. In addition, petitioner disputed the vagueness of the itemizations. In reply, respondent pointed to several provisions in the lease which require the tenants to assume responsibility for all personal property placed on the premises (including the garage), to keep the premises clean and to leave the premises clean and with no unusual damages. The lease also provides that if the tenant does not leave the premises clean and free from debris, the landlord will assess a charge of $50 for the first hour and $30 for each additional hour for clean-up (ordinary wear and tear excepted). In addition, respondent argued that it was irrelevant whether or not he was selling the unit because it was petitioner's responsibility to keep it clean.

7. Respondent's statement itemized several cleaning deductions: $625 for general cleaning, $75 for refrigerator cleaning, $75 for stove/range cleaning, $75 for dishwasher repair and cleaning, and $285 to power wash the garage floor. With respect to the appliances, respondent testified he and Tom Davoran attempted to clean them, but determined they were not salvageable so the microwave, refrigerator, dishwasher and gas range with oven were all replaced with stainless steel appliances (an upgrade from the existing ones). Petitioner was not charged for the cost to replace the appliances, just the attempts to clean them. Petitioner testified that he and his roommates made an effort to clean before leaving the apartment; in addition, he stated the apartment looked the same when he moved out as it did when he moved in. Respondent testified he and Tom Davoran spent 3 days in the unit cleaning and moving belongings out. Respondent power washed the garage floor because there were deposits of paint and an unknown substance (perhaps soap) on it. Photos of the apartment indicate there was some cleaning (beyond what one would expect from normal wear and tear) that needed to be done.

8. Respondent deducted $535 to repair nail holes and a few larger holes in walls throughout the apartment. There were nail holes around a dart board that was on a wall; the dart board was in the apartment when petitioner moved into it. Respondent skim coated the entire wall to patch the holes. In addition, there were 2 holes in closets that needed to be patched and in 3 rooms there was a hole in the wall where the door handle hit the wall.

9. Respondent deducted $7,000.00 from the deposit to remove and replace the carpeting throughout the unit. Respondent testified that the carpet was new in 2015 and it looked as though it had not been vacuumed or shampooed after petitioner moved out. Tyler Antrum who lived in the unit from March 2015 to September 2016 disputed that the carpet was new in 2015;

he testified that the carpet was fairly worn when he moved into the unit and it was not replaced during his tenancy. Petitioner testified that the carpet was in fairly good shape when he moved into the unit although there were some stains on it. In September 2018, respondent had the carpets professionally cleaned after petitioner notified him of its condition.

10. There were several deductions from the deposit related to removing and disposing of items left behind at the property: $350 for waste removal, $950 for owner's labor and $1331 for refuse removal by 800-Got-Junk. There were items left throughout the unit and in the garage that needed to be removed and disposed of. Petitioner testified that items left in the garage did not belong to him; he did not know if the items belonged to respondent or were left by past tenants so he left them there. At one point during his tenancy, petitioner made respondent aware of the all the items in the garage, but nothing was done. Respondent testified that there were belongings throughout the rooms of the unit. Petitioner did not feel responsible for items left by past tenants even though the lease requires the tenants to leave the premises in a clean condition free from accumulated debris upon vacating. The carpets and pad were included in the disposal cost of 800-Got-Junk.

11. There was an $800 deduction from the deposit to repair 8 screens. Included in the cost was respondent's time running to Lowe's for supplies, as well as the time to replace the screens. Respondent testified all the screens were either new or repaired when the tenants moved in. Petitioner denied damaging the screens. In addition, petitioner testified that respondent had repaired screens in the past (at his expense) and did not know why he would be charged for the same repair merely because his tenancy ended.

12. Respondent also deducted $950.00 from the deposit for his labor. Respondent testified that he and Tom Davoran spent 3 days at the apartment cleaning, moving items out and making repairs.

CONCLUSIONS OF LAW

13. 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.

14. 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.

15. 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). Proper notice was sent.

16. City ordinance and state law allow an owner of a rental property to retain all or part of a security deposit for the actual cost to repair damage beyond normal wear and tear which is attributable to the tenant, for nonpayment to rent, for nonpayment of utility or other charges that the tenant was required to pay directly to the landlord or a utility, and for expenses required to remove from the rental unit articles abandoned by the tenant. Minimum Housing Code Sec. 18-

120(c) and 9 V.S.A. Sec. 4461(b). Since 2012, the unit in question has seen several different groups of tenants come and go; the last time there was a full turnover of the unit was in 2015. Respondent has not been to the property for several years and has not inspected the unit or looked at damages attributable to former tenants since 2012. Petitioner informed respondent of the collection of items left in the garage by others, but the items remained there during petitioner's tenancy. In addition to all the items in the garage, there were items left in the unit at the end of the tenancy. Petitioner argued that the reason the entire deposit was withheld is that respondent was fixing and upgrading the unit so he could sell it.

17. Based on the evidence, the Board concludes it was reasonable for respondent to deduct $500.00 from the deposit for his time cleaning and removing items from the unit. The landlord deducted $625 for general cleaning and another $950 for "owner's labor," which, without additional justification, appears to be duplicative of the cleaning costs.

18. The deductions for repairing holes in the walls, power washing the garage floor, door repair, carpet replacement, and screen repair were not reasonable as that work was part of normal wear and tear after years of renting to multiple groups of tenants. Further, due to the many tenants who have resided at this apartment without an intervening apartment turnover inspection, the Board cannot conclude that the damages were attributable to these tenants, as opposed to tenants who rented this unit in the past.

19. With respect to the three charges related to cleaning the appliances which were then replaced, the Board concludes the charges were not reasonable. The Board finds respondent knew, or should have known, immediately that they did not want to spend time cleaning the appliances. The replacement of the appliances with new stainless steel ones also suggests respondent's plan from the beginning was to replace all the appliances.

20. Finally, the Board concludes the charges for refuse and waste removal were part of normal wear and tear after many years of renting as an absentee landlord. The Board finds that the petitioners asked respondent about the refuse in the garage, but they received no response from the respondent. Additionally, photos admitted during the hearing showed that some of the waste removed from the apartment included the carpet and pad. Replacement of the carpet and pad was the result of normal wear and tear, and the tenants' security deposit therefore cannot be charged for the waste costs associated with items for which they are not otherwise responsible.

Order

Accordingly, it is hereby ORDERED:

21. Petitioner Michael Deedy is entitled to recover from respondent Edward Horgan the following amounts:

a) $2,402.50 of the principal amount of the deposit (plus accrued interest) improperly withheld after September 14, 2019; and

b) Additional interest of $0.02 per day from September 15, 2019 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 24th day of January, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara

Patrick G. Kearney

Olivia Pena

Betsy McGavisk

Patrick Murphy