



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 10/21/21

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

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

cc: Marie Denison
Melissa Lafayette

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

**In re: Request for Hearing of MARIE DENISON)
And TYLER FERLAND Regarding)
Withholding of Security by MELISSA) Security Deposit Appeal
LAFAYETTE for Rental Unit at 93 ½)
North Street, Apt. 3)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on September 24, 2021. Board Chair Josh O’Hara presided. Board Members Betsy McGavisk and Charlie Gliserman were also present. Board Member Evan Litwin appeared remotely. Petitioner Marie Denison appeared remotely. Respondent Melissa Lafayette although notified of the hearing and the opportunity to be heard was not present.

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 Melissa Lafayette is the owner of a rental unit, 93 ½ North Street, Apt. 3, in the City of Burlington which is the subject of these proceedings. Respondent’s son, Eric Lafayette, helps manage the property; petitioner testified that Mr. Lafayette was the person who signed the lease and had some other limited involvement with the property.
2. Petitioners Marie Denison and Tyler Ferland moved into the rental unit with a written lease which ran from July 13, 2018 to June 30, 2019. Monthly rent was \$1,000.00.
3. Petitioners paid a security deposit of \$1,000.00 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 June 15, 2021.

5. Respondent returned the entire amount of the security deposit to petitioners at the end of July. There was no written statement accompanying the check; the check itself was all that was in the envelope mailed to petitioners. After petitioners' filed their request for a hearing on July 20, 2021, respondent reached out to them; she told petitioners that she did not have a forwarding address and that's why their deposit was not returned. Petitioners provided respondent with their address and she returned the deposit.

6. Petitioners argued that the deposit was willfully withheld and requested that the Board order double damages. The basis of petitioners' argument is that the deposit was not returned in a timely manner even though they provided a forwarding address to Eric Lafayette. When petitioners failed to receive their deposit they did not reach out to either respondent or Eric Lafayette.

7. Interest was not credited to the deposit.

Conclusions of Law

8. 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.

9. 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.

10. 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).

11. 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 return the deposit until the end of July – more than 14 days after petitioners vacated the apartment. Had respondent not returned the entire deposit to petitioners, she would have forfeited the right to withhold any part of it.

12. 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-

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

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). The deposit was not returned in a timely manner because respondent did not have a forwarding address for petitioners even though one was provided to Eric Lafayette. When respondent received the address she sent a check to petitioners. The Board concludes the deposit was not willfully withheld but was returned late due to a miscommunication between respondent and Eric Lafayette. While such miscommunication can be excused on the first instance, the Board notes that future violations of the ordinance may have a different outcome.

13. Petitioners are entitled to recover interest on the security deposit. Minimum Housing Code Sec. 18-120(c). The Housing Code requires that the security deposit be held by the owner in an interest-bearing account with an interest rate equivalent to a current Vermont bank passbook savings account. Sec. 18-120(a). The Board applies the interest rate currently found in most bank passbook savings accounts – 0.25% simple annual interest.

Order

Accordingly, it is hereby ORDERED:

14. Petitioners Marie Denison and Tyler Ferland are entitled to recover from respondent Melissa Lafayette the following amounts:

a) Interest in the amount of \$7.31 on the entire deposit for the period July 13, 2018 to June 15, 2021; and

b) Additional interest of \$0.007 per day from June 16, 2021 until such date as interest is returned to petitioners.

DATED at Burlington, Vermont this 21st day of October, 2021.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Charlie Gliserman
Charlie Gliserman

/s/ Evan Litwin
Evan Litwin