



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

9/19/22

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk

Betsy McGavisk  
Board Vice Chair

cc: Olivia Do  
Arlette & Rene Ball

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

**In re: Request for Hearing of OLIVIA DO and )  
WARREN NIELSEN Regarding ) Security Deposit Appeal  
Withholding of Security Deposit by )  
ARLETTE and RENE BALL for Rental )  
Unit at 80 Cedar Street )**

**DECISION AND ORDER**

The above-named hearing came before the Housing Board of Review on August 8, 2022; the hearing was held remotely via Zoom. Board Vice Chair Betsy McGavisk presided. Board Members Evan Litwin, Olivia Taylor and Josh Wronski were also present. Petitioners Olivia Do and Warren Nielsen were present and testified. Respondent Arlette Ball was also present and testified. Appearing and testifying as a witness was Meghan Gibbo.

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. Respondents Arlette and Rene Ball are the owners of a rental unit, 80 Cedar Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Olivia Do and Warren Nielsen moved into the rental unit with a written lease which ran from June 1, 2021 to May 31, 2022. Monthly rent was \$1375.00.
3. Petitioners paid a security deposit of \$1375.00 to respondents. 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 May 31, 2022. At the move-out inspection on May 31, respondent Rene Ball indicated to petitioners that everything looked okay. On June 1,

2022 via text message, petitioners provided respondents with their forwarding address for the return of their deposit.

5. On June 4, 2022, respondents texted petitioners indicating that they would be withholding some of the deposit for cleaning and repairs. In response, petitioners sent respondents an email disputing any damage in the apartment; in addition, petitioners indicated they cleaned the apartment well before leaving and Rene Ball indicated the cleaning was adequate. In their email, petitioners provided respondents with a link to state law regarding the return of security deposits.

6. On June 7, 2022, respondents sent petitioners an email with an itemized list of deductions from the deposit; respondents itemized deductions of \$360.00 from the deposit for cleaning, garbage removal, repairs and painting. Respondents indicated they were putting a check in the amount of \$1,015.00 in the mail to petitioners. In their email, respondents also indicated they were well aware of the date by which they needed to return the deposit and didn't need to be reminded of tenant/landlord law: "I am in this business long time enough to know what I am doing." Respondents' email did not provide notice of petitioners' right to dispute the withholding of the deposit before this Board. In addition, interest was not credited to the deposit.

7. Petitioners disputed the withholding of the deposit. Petitioners also argued that the deposit was willfully withheld and requested that the Board award double damages. Petitioners provided respondents with a link to state law and argued that their failure to follow the law demonstrated the willful withholding of the deposit. Respondents argued that the deposit was not willfully withheld; there was damage in the apartment and it was not sufficiently cleaned so they withheld money to repair the damage and to clean. When petitioners said they would go to court to appeal the withholding of \$360 of the deposit, respondents indicated that was fine –

respondents believed their deductions from the deposit were proper and they weren't going to argue about it anymore.

### **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 within 30 days; and the statement must be hand-delivered or sent by certified mail.<sup>1</sup> 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. Respondents did not provide petitioners with notice of their right to appeal to this Board within 30 days. Therefore, the Board concludes that respondents forfeited the right to withhold any part of the deposit.

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. 18-120(c) and 9 V.S.A. Sec. 4461(b)(e). Petitioners have also moved for double damages, alleging respondents' failure to return their 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). Petitioners provided respondents with a link to state law to which they replied they were well aware of tenant/landlord laws, had been in business for a long time and knew what they're doing. Respondents indicated they know all about tenant/landlord laws. Consequently, they should be aware of their obligations under city law as well. Respondents' failure to provide notice of petitioners' appeal rights in their statement of deductions demonstrated, at the least, their indifference to city law.

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

Consequently, the Board concludes the amount of the deposit withheld was done so willfully.

Therefore, the Board will order double the amount withheld.

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.

14. The Board expresses no opinion about the availability of relief in other legal venues.

### **Order**

Accordingly, it is hereby ORDERED:

15. Petitioners Olivia Do and Warren Nielsen are entitled to recover from respondents Rene and Arlette Ball the following amounts:

a) \$360.00 of the principal amount of the security deposit improperly withheld after June 14, 2022;

b) \$360.00 double the amount willfully withheld;

c) Interest in the amount of \$3.57 on the entire deposit for the period June 1, 2021 to June 14, 2022; and

d) Additional interest of \$0.002 per day from June 15, 2022 until such date as the amount improperly withheld is returned to petitioners.

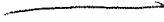
DATED at Burlington, Vermont this 19<sup>th</sup> day of September, 2022.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk  
Betsy McGavisk

/s/ Evan Litwin  
Evan Litwin

/s/ Olivia Taylor  
Olivia Taylor

  
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Josh Wronski