



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 8/15/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Vice Chair

cc: Stephen Donahue
Craig Atwood

**STATE OF VERMONT
CHITTENDEN COUNTY, SS.**

**In re: Request for Hearing of STEPHEN)
DONAHUE Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by CRAIG ATWOOD) HOUSING BOARD OF REVIEW
for Rental Unit at 64 Greene Street)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on July 15, 2019. Board Vice Chair Josh O’Hara presided. Board Members Patrick Kearney, Patrick Murphy and Olivia Pena were also present. Petitioner Stephen Donahue was present and testified. Respondent Craig Atwood was represented at the hearing by Ginny Kolbenson who testified. Appearing and testifying as witnesses were Mark Kolbenson, Robert Thibault and Jack Conant.

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 Craig Atwood is the owner of a rental unit, 64 Greene Street, in the City of Burlington which is the subject of these proceedings. Ginny Kolbenson manages the property.
2. Petitioner Stephen Donahue and 3 others moved into the rental unit with a written lease which ran from June 1, 2017 to May 18, 2018. The lease was renewed for a second year ending on May 17, 2019. Monthly rent was \$3200.00.
3. Petitioner and his roommates paid a security deposit of \$3200.00 to respondent. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner and his roommates vacated the apartment on May 17, 2019.
5. On May 28, 2019, respondent sent a statement to petitioner in accordance with ordinance requirements. Said statement itemized deductions of \$1889.09 from the deposit. Interest in the amount of \$5.60 was credited to the deposit. Respondent returned \$1316.51 of the deposit to petitioner. Petitioner disputed some of the deductions from the deposit.

6. Both parties testified with respect to cleaning which appeared as a \$918.75 deduction on the itemized statement. The charge was for 12.25 hours of cleaning at a rate of \$75.00/hour for cleaning the kitchen, bathrooms, baseboards/windowsills/doors, floors, fans and the basement. Ginny Kolbenson testified that cleaning is not normal wear and tear: a tenant is expected to fully and thoroughly clean an apartment. Petitioner disputed the deduction for cleaning, including the rate of \$75/hour for cleaning which he believed was unreasonable. Petitioner testified that he and his roommates spent an entire day cleaning the apartment; in addition, one of the tenant's parents did some cleaning. Photos submitted by Ginny Kolbenson show that the unit was reasonably well cleaned except for the stove and oven; it also appears that there were some missed spots in the bathroom. When questioned about the rate for cleaning Ms. Kolbenson stated the hourly rate of \$75 includes materials; the actual rate she pays her workers is \$65-\$68/hour. As to the reasonableness of the charge, Ms. Kolbenson stated she does not have cleaners available ahead of time because she expects a rental unit to be returned in clean condition. When she needs cleaners she relies on people she knows who can work on short notice and for long hours; she stated she is able to engage those people because of the rate she pays them. The Board finds the rate charged for cleaning is not reasonable. The Board finds a reasonable rate for cleaning is \$40/hour.

7. Both parties testified with respect to touching up paint on the walls and trim throughout the unit which appeared as a \$512.50 deduction on the itemized statement. Ginny Kolbenson testified that it took 7.5 hours to touch up the paint; the rate charged was \$75/hour. Ms. Kolbenson deducted \$50 from the charge to account for normal wear and tear which is identified as 10 minutes per bedroom. The apartment was painted before petitioner moved into it. The Board finds a reasonable deduction for painting that was beyond normal wear and tear is \$160.00: 4 hours of time at a rate of \$40/hour.

8. Both parties testified concerning damage to the basement screen door which appeared as a \$125.00 deduction on the itemized statement. The deduction is an estimate (not the actual cost) to repair the screen door. Ginny Kolbenson testified that it wasn't just the screen that was ripped, but part of the door frame as well. Petitioner acknowledged that the screen ripped during his tenancy, but disputed the

charge as unreasonable. Based on the photo submitted by Ms. Kolbenson, the screen door was old and very worn.

9. Both parties testified concerning the living room ceiling fan which appeared as a \$165.00 deduction on the itemized statement. The globe was missing from the fixture; in addition, Ginny Kolbenson testified that the mounting bracket for the fan was bent. Petitioner acknowledged responsibility for the missing globe only, but disputed the charge as being unreasonable. Petitioner priced a new globe on Amazon at \$15-\$25. The deduction is based on an estimate (not the actual cost) to replace the entire ceiling fan, in the event the bracket cannot be repaired.

10. Petitioner did not dispute the deductions for the water bill.

CONCLUSIONS OF LAW

11. 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.

12. 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.

13. 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 provided.

14. Based on the evidence, the Board concludes the deductions for cleaning and touching up paint were not reasonable as some of the cleaning and painting was part of normal wear and tear. In addition, the Board has found the hourly rate for the work was not reasonable. The Board concludes a reasonable deduction for cleaning and painting that was beyond normal wear and tear is \$180.00 and \$160.00, respectively.

15. Based on the evidence, the Board concludes the deductions for the screen door and missing globe were not reasonable. The deductions were based on estimates, not the actual cost, to repair the damage. The Board concludes a reasonable deduction to repair the screen door is \$100.00 and to replace the fan is \$125.00.

ORDER

Accordingly, it is hereby ORDERED:

16. Petitioner Stephen Donahue is entitled to recover from respondent Craig Atwood the following amounts:

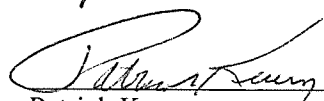
- a) \$1156.25 of the principal amount of the deposit improperly withheld after May 31, 2019; and
- b) Additional interest of \$0.008 per day from June 1, 2019 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 15th day of August, 2019.

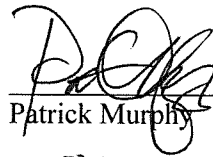
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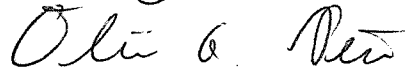
Josh O'Hara



Patrick Kearney



Patrick Murphy



Olivia Pena