

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

**In re: Request for Hearing of Hannah Ankerson,)
Julia Deziel, Maggie Dwyer and Anna)
Humphreys Regarding Withholding of) Security Deposit Appeal
Security Deposit by Susan Linnell for)
Rental Unit at 241 So. Winooski Ave., #2)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on November 2, 2020; the hearing was held virtually via Zoom. Board Chair Josh O’Hara presided. Board Members Patrick Murphy, Olivia Pena, Charlie Gliserman and Betsy McGavisk were also present. Petitioners Maggie Dwyer, Hannan Ankerson, Julia Deziel and Anna Humphreys were present and testified. Respondent Susan Linnell was also present and testified. Also appearing and testifying were Carolyn Dwyer and Zach Cook.

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 Susan Linnell is the owner of a rental unit, 241 So. Winooski Avenue, #2, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Hannah Ankerson, Julia Deziel, Maggie Dwyer and Anna Humphreys moved into the rental unit with a written lease which ran from May 15, 2020 to August 13, 2020. Monthly rent was \$2300.00.
3. Petitioners paid a security deposit of \$2300.00 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 August 13, 2020.

5. On August 20, 2020, respondent sent, by certified mail, a packet of information to petitioner Maggie Dwyer (as the point person for all the tenants), including a written statement of deductions from the security deposit. Said statement itemized deductions of \$1161.70 from the deposit. Interest in the amount of \$3.45 was credited to the deposit and there was a \$25 credit for “cubes/hanging thing left for new tenants.” The statement indicated that \$1166.75 was being returned to petitioners. There was no check included in the packet of information.

6. Petitioners disputed the deductions as being unfair and argued that respondent’s failure to return the deposit was willful. Respondent deducted a total of \$614.33 for cleaning (including carpet cleaning), \$250 for repairs, \$22 for garbage, \$242.87 for utilities, \$5 for certified mail fee and \$27.50 for ¼ of Burlington’s apartment registration fee. Petitioners testified that they spoke to some of respondent’s former tenants who claimed respondent had a history of claiming she had returned a deposit when she didn’t. Petitioners believe respondent never intended to include the check in their packet.

7. Respondent denied that the deductions were unfair or not valid ones. When questioned by the Board about some of the deductions, such as the certified mail fee and apartment registration fee, respondent stated she believed the deductions to be allowed under city ordinance; she also testified that an attorney had reviewed her leases several times and never questioned any provisions contained in it. However, after this case was adjourned, respondent failed to leave the hearing or mute her microphone and was heard saying, “looks like I did have stuff in the lease...in the accounting that wasn’t supposed to be there.”

8. Respondent denied that the deposit was willfully withheld; she did not know petitioners hadn’t received a check until she received the filing information from the Board.

Petitioners confirmed that they did not tell respondent the check was not included in the packet they received from her. Respondent testified it is not her practice to confirm that a tenant has received a check or to reconcile her accounts to confirm that a check has cleared her bank (even though she pointed out that because she has an MBA she provides tenants with a very detailed accounting of “where the money goes”).

Conclusions of Law

9. 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.

10. 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.

11. 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).

12. 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. None of petitioners' deposit was returned to them even though respondent's accounting indicated that \$1166.75 was being returned. It is a landlord's responsibility to ensure that a deposit is returned. As petitioners' deposit was not returned to them within 14 days of the vacant date, the Board concludes respondent forfeited the right to withhold any part of the deposit.

13. If the failure to return a deposit within 14 days is willful, the landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). Petitioners argued that respondent's failure to return the deposit was willful; in fact, petitioners believed that respondent never intended to send a check. Respondent did not know the check wasn't received (though, arguably, she should have known) and petitioners did not contact her about it. Based on the evidence, the Board concludes the deposit was not willfully withheld.

Order

Accordingly, it is hereby ORDERED:

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

14. Petitioner Maggie Dwyer (on behalf of all the tenants) is entitled to recover from respondent Susan Linnell the following amounts:

a) \$2303.45, the amount of the security deposit (including interest) improperly withheld after August 27, 2020; and

b) Additional interest of \$.01 per day from August 28, 2020 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 10th day of December, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O’Hara
Josh O’Hara

/s/ Olivia Pena
Olivia Pena

/s/ Charlie Gliserman
Charlie Gliserman

Concurring opinion

Although we, Patrick Murphy and Betsy McGavisk, concur with the conclusions reached by the majority, we wish to highlight additional findings of potential importance to future cases involving this or other respondents.

The Board has held in prior cases that the withholding of a certified mail fee from a security deposit is unlawful, as it is not among the four (4) legitimate charges provided for in Section 18-120(c) of Burlington’s Minimum Housing Code:

1. Damage beyond normal wear and tear to the premises which is attributable to the tenant
2. Nonpayment of rent
3. Nonpayment of utility charges
4. Expenses required to remove from the rental unit articles abandoned by the tenant

Similarly, this Board has established precedent finding that an *automatic* cleaning charge like the carpet cleaning charge described in this lease is not an allowable deduction—that any amount

withheld must reflect the *actual* cost of damage which exceeds the “normal wear and tear” standard.

Lastly, this Board has found that withholding a “rental registration fee” is not an allowable deduction from a tenant’s security deposit. Beyond the fact that the lease itself has marked the charge “N/A” presumably not applicable in this case, and that this fee is not among the four allowable charges, the ordinance does not seem to have contemplated a landlord passing this fee along to a tenant or tenants. Section 18-15(a) calls for “the owners of all rental units subject to inspection pursuant to Section 18-16 shall be required to annually file a registration application and fee with the enforcement agency, which shall be due annually on or before April 1.” Section 18-30(a) elaborates further: “*Registration fee.* Pursuant to Section 18-15, a registration fee shall be charged to the owner of every rental unit in the city that is subject to periodic inspections.”

The respondent in this case testified during the hearing that she has charged these fees during the many years she has operated as a landlord in Burlington, while acknowledging after the hearing that some or all of these should not have been withheld. Given the respondent’s testimony, as well as her experience chairing this Board in the past, any future cases involving this respondent and questions of “willful withholding” should consider these facts.

/s/ Patrick Murphy
Patrick Murphy

/s/ Betsy McGavisk
Betsy McGavisk