



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 10/19/22

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk
Board Chair

cc: Juliette Fredericks
Rich Bassett

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

**In re: Request for Hearing of JULIETTE)
FREDERICKS, ERIN TEVNAN and)
JULIA HART Regarding Withholding of) Security Deposit Appeal
Security Deposit by RICH BASSETT)
for Rental Unit at 117 N. Winooski Ave.,)
Apartment A)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on September 19, 2022; the meeting was held remotely via Zoom. Board Vice Chair Betsy McGavisk presided. Board Members Charlie Gliserman, Evan Litwin, Olivia Taylor and Josh Wronski were also present. Petitioners Juliette Fredericks, Erin Tevnan and Julia Hart were present and testified. Respondent Rich Bassett was also present and testified. Also appearing and testifying as witnesses were Maggie McCloskey and William Ward.

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 Rich Bassett is the owner of a rental unit, 117 N. Winooski Avenue, Apt. A, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Juliette Fredericks, Erin Tevnan and Julia Hart moved into the rental unit on June 1, 2020 under the terms of a written lease. The initial monthly rent was \$4,500.00.
3. Petitioners paid a security deposit of \$4,500.00 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 May 26, 2022.

5. On June 7, 2022, respondent sent, by certified mail, a hand-written statement to Maggie McCloskey (one of the former tenants who is not a party to these proceedings). The statement was not delivered to Ms. McCloskey but was sent back to respondent. Upon contacting respondent about the return of the deposit, respondent told petitioners he was away and that his mail was on hold until June 28. Respondent indicated he would track down the mail when he returned. Petitioners requested an update from respondent on several occasions and did not hear back from respondent until July 3, 2022.

6. On July 3, 2022, respondent, after finally receiving the returned mail, clipped the returned envelope on his mailbox for petitioners to pick up. However, when Maggie McCloskey went to pick up the envelope it was not clipped to the mailbox. Respondent assumed the postal carrier picked up the envelope to try to redeliver it. The parties stopped communicating after that.

7. None of the deposit was returned to petitioners. Respondent itemized damages of \$4,673.20; most of the damage stemmed from the loss of heat in the apartment in January 2022 and the resulting damage caused by the pipes freezing in the apartment. Respondent attributed the damage to petitioners because Julia Hart had unplugged the heaters provided by respondent to keep the apartment warm while the furnace was being repaired. Ms. Hart unplugged the heaters because she was concerned about leaving them plugged in and unattended, a potential safety hazard. William Ward, Director of Permitting and Inspections, testified that he would not recommend leaving electric heaters plugged in and unattended due to safety concerns. The Board finds that it was reasonable for Julia Hart to unplug the heaters out of concern for petitioners' rental unit, as well as other units in the building.

8. Respondent did not inform petitioners of their opportunity to request a hearing before this Board to dispute the withholding of the deposit.

9. Petitioners argued that the deposit was willfully withheld and requested double damages. The basis of petitioners' argument is that respondent stopped communicating with them about a way to get a copy of the statement sent on June 7, 2022. After the returned envelope was clipped to the mailbox and presumably picked up by the postal carrier to redeliver it, petitioners argue that respondent was satisfied to wait and see if the statement was delivered. Petitioners argue that respondent's actions evidence a lack of importance with respect to the return of the deposit, and consequently, evidence that the deposit was willfully withheld. When the parties were texting back and forth about the deposit, respondent did not inform petitioners that none of the deposit was being returned. Petitioners never thought the deposit would be withheld. Respondent denied that he willfully withheld the deposit; respondent attributed the damage from the frozen pipes to petitioners and withheld the deposit to cover those damages.

10. Respondent argued that petitioners did not file their request for a hearing on time, and therefore, the case should be dismissed.

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. Respondent argued that petitioners did not file their request for hearing on time.

Upon receiving notice of a landlord's intent to withhold all or part of a security deposit, a tenant may request a hearing before this Board to determine the reasonableness of the landlord's deductions. Minimum Housing Code Sec. 18-120(e). The request must be submitted in writing within 30 days of receipt of notice of the opportunity to request a hearing or, in the absence of such notice, within 44 days of the date the tenant vacated the rental unit. Minimum Housing Code Sec. 18-120(e). Respondent did not provide petitioners with notice of their right to appeal the withholding of the deposit to this Board. In the absence of that notice, petitioners had 44 days from the date they vacated the apartment to file a request for hearing. Petitioners moved out on May 26, 2022. Petitioners filed their request for hearing on July 9, 2022 – exactly 44 days after they vacated the apartment. The Board concludes petitioners filed their request on time.

14. 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).

15. 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 provide petitioners with a statement informing them of their opportunity to request a hearing before this Board to dispute the withholding of their deposit. Therefore, the Board concludes that respondent forfeited the deposit.

16. 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). 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). Petitioners argued that respondent’s lax attitude with respect to providing a withholding statement to them evidenced an indifference to the law, and thus, the willful withholding of the deposit. Respondent argued that he followed the law with respect to providing a statement to petitioners, he tried to get the

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

statement to them by leaving it clipped to his mailbox for Maggie McCloskey to pick up and he shouldn't be faulted for the post office's failure to deliver the statement to petitioners. Despite respondent's lack of communication with petitioners at times, the Board concludes there is insufficient evidence to show the deposit was willfully withheld.

17. 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.

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

Order

Accordingly, it is hereby ORDERED:

19. Petitioners Juliette Fredericks, Erin Tevnan and Julia Hart are entitled to recover from respondent Rich Bassett the following amounts:

a) \$4500.00 of the principal amount of the deposit improperly withheld after June 9, 2022;

b) Interest in the amount of \$22.75 on the entire deposit for the period June 1, 2020 to June 9, 2022; and

c) Additional interest of \$0.03 per day from June 10, 2022 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 19th day of October, 2022.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Evan Litwin
Evan Litwin

/s/ Charlie Gliserman
Charlie Gliserman

/s/ Josh Wronski
Josh Wronski

/s/ Olivia Taylor
Olivia Taylor