



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 9/4/20

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Josh O’Hara  
Josh O’Hara  
Board Chair

cc: Luise Fuchs (for all tenants)  
Bissonette Properties

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

**In re: Request for Hearing of KATHRYN BURNHAM,)  
NINA MATT, LUISE FUCHS and EMMA        )  
RADEKA Regarding Withholding of Security   ) Security Deposit Appeal  
Deposit by BISSONETTE PROPERTIES for       )  
Rental Unit at 47 Pitkin Street                )**

**DECISION AND ORDER**

The above-named hearing came before the Housing Board of Review on August 3, 2020; the meeting was held virtually via Zoom. Board Vice Chair Patrick Murphy presided. Board Members Josh O’Hara and Charlie Gliserman were also present. Petitioners Nina Matt and Luise Fuchs were present and testified. Respondent Bissonette Properties was represented at the hearing by Addy Bara, Christina Bissonette, Margo Yeadon and Lauren Austin who testified.

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 Bissonette Properties is the owner of a rental unit, 47 Pitkin Street, in the City of Burlington which is the subject of these proceedings. Addy Bara, Christina Bissonette, Margo Yeadon and Lauren Austin are property managers for respondent.

2. Petitioners Kathryn Burnham, Nina Matt, Luise Ruchs and Emma Radeka moved into the rental unit with a written lease which ran from June 1, 2019 to May 25, 2020. Petitioners renewed the lease in October 2019 for an additional year beginning on May 25, 2020 and ending on May 25, 2021. Monthly rent was \$3125.00.

3. Petitioners paid a security deposit of \$2469.00 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 1, 2020.

5. On June 10, 2020, respondent sent, by certified mail, a statement to petitioners in accordance with ordinance requirements. Said statement itemized deductions in excess of the total amount of the security deposit. In addition, the statement notified petitioners they were responsible for rent until the unit was re-rented.

6. On July 16, 2020, respondent sent petitioners a final statement as the unit was re-rented beginning on August 1, 2020.

7. Petitioners disputed the charge for unpaid rent claiming the unit was uninhabitable because it was infested with mice; petitioners also claimed that respondent was not doing enough to address the problem. Petitioners first complained about mice in the unit on January 31, 2020; in response to their complaint, respondent sent their maintenance person to set traps and assess the situation. On February 8, 2020, petitioners requested that respondent send an exterminator to the unit because there were still mice in the unit. An exterminator went to the unit on February 13, 2020 to set traps. Thereafter, the exterminator went to the unit on February 20, February 27, March 17, March 19, March 24 and April 2 with plans to continue weekly service at the unit. During the visits, the exterminator set traps, collected 1-2 mice each time and identified areas of entry to be plugged. Respondent's maintenance person also went to the unit on January 30, February 20, March 17, March 18, March 24, April 2 and April 3; the maintenance person set traps, met with the exterminator and plugged gaps and holes identified by the exterminator as possible entry points for mice.

8. Respondent argued that they responded swiftly to petitioners' complaints and were addressing the problem. Respondent believed petitioners were merely using the mice in the unit as an excuse to move out.

9. Each party argued that the other party broke the lease. Petitioners argued that respondents broke the lease because the unit was uninhabitable. Respondent argues that petitioners broke the lease when they moved out before the lease expired.

10. The final statement sent to petitioners on July 16, 2020 indicated they owed respondent \$6652.63 in unpaid rent.

11. The itemized statement indicated \$4.05 was deducted from the deposit for “certified return mail” and \$430.00 for cleaning. There is also a stop payment fee of \$100.00 for May and June rent attributable to Nina Matt.

### **Conclusions of Law**

12. 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.

13. 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.

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.

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.

15. The dispute between the parties centers around whether or not the unit was habitable. Petitioners argue it was not, and therefore, they were entitled to break the lease and they do not owe any unpaid rent. Respondent argues they addressed the problem swiftly and petitioners used the mice in the unit as an excuse to move out before the lease ended. State law, 9 V.S.A. Sec. 4458, addresses a landlord's obligations for habitability and tenant remedies. It is beyond the purview of this Board to decide on the question of habitability; we defer this issue to the appropriate court for resolution of whether or not unpaid rent is owed.

16. Petitioners did not dispute the cleaning charges. With respect to the deductions for certified return mail and stop payment fee, the Board concludes these deductions were not proper. A security deposit may be withheld for damages beyond normal wear and tear, for unpaid rent, for unpaid utilities and for the cost of the landlord to remove abandoned items from a rental unit. Minimum Housing Code Sec. 18-120(c). The certified mail fee is a cost of doing business. The stop payment fee does not reflect the actual cost to respondent when Nina Matt stopped payment on checks; that cost can be readily ascertained by respondent.

### **Order**

Accordingly, it is hereby ORDERED:

17. Petitioners Nina Matt, Luise Fuchs, Kathryn Burnham and Emma Radeka are entitled to recover from respondent Bissonette Properties the following amounts:

a) \$104.05 of the principal amount of the deposit improperly withheld after June 15, 2020; and

b) Additional interest of \$0.001 per day from June 16, 2020 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 4<sup>th</sup> day of September, 2020.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Patrick Murphy  
Patrick Murphy

/s/ Josh O'Hara  
Josh O'Hara

/s/ Charlie Gliserman  
Charlie Gliserman