



HOUSING BOARD OF REVIEW

**City of Burlington**

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**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: Helena Gaffney  
VOJEL Rentals

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

**In re: Request for Hearing of Helena Gaffney, )  
Alvaro Ortega, and Hailey Davis )  
Regarding Withholding of Security ) Security Deposit Appeal  
Deposit by VOJEL, Inc. for Rental Unit )  
at 34 Colchester Avenue, Unit 1 )**

**DECISION AND ORDER**

The above-named hearing came before the Housing Board of Review on August 3, 2020; the hearing was held virtually via Zoom. Board Vice Chair Patrick Murphy presided. Board Members Josh O'Hara and Charlie Gliserman were also present. Petitioner Helena Gaffney was present and testified. Respondent VOJEL, Inc. was represented at the hearing by Zalman Wilhelm 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 VOJEL, Inc. is the owner of a rental unit, 34 Colchester Avenue, Unit 1, in the City of Burlington which is the subject of these proceedings. Zalman Wilhelm manages the property.
2. Petitioners Helena Gaffney, Alvaro Ortega, Hailey Davis and 3 others moved into the rental unit with a written lease which ran from June 3, 2019 to May 28, 2020. Monthly rent was \$4200.00.
3. Petitioners paid a security deposit of \$4200.00 to respondent. Petitioners and their roommates were to receive back their security deposit at the end of the lease minus any amounts withheld for damages. Helena Gaffney represented all the tenants at the

hearing; she was authorized by her former roommates to receive any money returned to them which she would then distribute accordingly.

4. Petitioners and their roommates vacated the apartment on May 31, 2020.

5. On June 16, 2020, respondent emailed petitioners letting them know that they were still calculating the costs of deductions from the deposit for cleaning and removing items from the apartment. At that time, they provided an itemized list of deductions totaling \$1340.00. Neither respondent's email nor the list of deductions informed them of their right to appeal the withholding of the deposit.

6. On June 30, 2020, respondent mailed a statement to each tenant indicating that a total of \$2190.00 was being withheld from their deposit for disposal of items from the apartment and cleaning. Respondent returned \$335.00 to each tenant. The statement did not include notice of petitioners' right to appeal the withholding of the deposit to this Board.

7. Interest was not credited to the deposit.

8. Petitioners disputed the timeliness of respondent's notice and return of the deposit. Zalman Wilhem indicated respondent needed time to estimate the damages and did not know what the final amount of the deductions would be until after June 22 when a second cleaning of the apartment was scheduled.

### **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.<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

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

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. In this case, respondent failed to comply with the notice requirements by failing to include petitioner's appeal rights in the statement and by failing to return the deposit within 14 days of the vacate date. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

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.

### **Order**

Accordingly, it is hereby ORDERED:

14. Petitioner Helena Gaffney, on behalf of all the tenants, is entitled to recover from respondent VOJEL, Inc. the following amounts:

a) \$2190.00 of the principal amount of the deposit improperly withheld after June 14, 2020;

b) Interest in the amount of \$10.87 on the entire deposit for the period June 1, 2019 through June 14, 2020; and

c) Additional interest of \$0.02 per day from June 15, 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