



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 9/29/21

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara
Board Chair

cc: Marcie Gallagher
Graham Turk
Sisters & Brothers Investment Group

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

In re: Request for Hearing of GRAHAM)
TURK and MARCIE GALLAGHER)
Regarding Withholding of Security) Security Deposit Appeal
Deposit by SISTERS & BROTHERS)
INVESTMENT GROUP for Rental Unit)
At 371 Pearl Street, #4)

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on September 7, 2021. Board Chair Josh O’Hara presided. Board Members Josh O’Hara and Olivia Taylor were present; Board Members Charlie Gliserman and Evan Litwin attended the hearing remotely. Petitioner Graham Turk, who attended the hearing remotely, testified. Respondent Sisters and Brothers Investment Group was represented at the hearing by Mac Stevens who appeared in person and 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 Sisters and Brothers Investment Group is the owner of a rental unit, 371 Pearl Street, #4, in the City of Burlington which is the subject of these proceedings. Mac Stevens is the property manager; petitioners were already living in the unit when Mr. Stevens began managing the property.

2. Petitioners moved into the rental unit with a written lease which ran from September 1, 2018 to August 31, 2019. On January 1, 2021, petitioners signed a written, month-to-month lease. Monthly rent was \$2100.00.

3. Petitioners paid a security deposit of \$2100.00 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, 2021.

5. On June 14, 2021, respondent sent a statement via certified mail to Marcie Gallagher in accordance with ordinance requirements. Said statement itemized deductions of \$142.00 from the deposit. Interest in the amount of \$5.25 was credited to the deposit. Respondent returned \$1,963.25 of the deposit to petitioners.

6. In addition to disputing the deductions for steam cleaning the carpet and removing chairs, petitioners argued that the deposit was not sent in a timely manner because they did not receive it until after June 18, 2021 (the date the postal service first tried to deliver the mail to Marcie Gallagher). Documents submitted by both parties indicate the itemized statement and check were mailed on June 14, 2021.

7. Both parties testified with respect to steam cleaning the carpet which appeared as a \$100 deduction on the itemized statement. Petitioners argued that cleaning the carpet is part of normal wear and tear, particularly since they lived in the unit for almost 3 years. In addition, Graham Turk surmised that if there was damage to the carpet, it was probably a result of some ceiling damage which occurred in 2020. Mac Stevens testified the deduction was a result of paint splotches on the carpet in one of the bedrooms. Graham Turk testified he did not remember seeing any paint on the carpets. Mac Stevens testified that there was an addendum to the lease with the schedule of charges to be deducted from the security deposit should there be damages in the unit; the charge to steam clean the carpet is \$100.00. Mr. Stevens did not know whether or not petitioners received the addendum.

8. Both parties testified with respect to the deduction of \$30.00 to remove 2 chairs from the unit. The deduction covered the cost to dispose of the chairs, as well as the time it took to dispose of them. Graham Turk testified the chairs were left in the unit because the new tenants wanted them. Mac Stevens told Marcie Gallagher that he would need a written statement from the new tenant(s) indicating they wanted the chairs left in the apartment. Mr. Stevens did not receive a statement from the new tenant(s) and he disposed of the chairs.

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 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). Petitioners disputed the timeliness of the notice of withholding because they did not receive the notice until after 14 days. However, state law and city ordinance are both clear that notice must be sent – not received - within 14 days of the vacate date. Respondent mailed the statement on June 14, 2021 – 13 days after petitioners vacated the unit. Timely notice was provided.

12. Petitioners disputed the deductions for steam cleaning the carpet and for disposing of 2 chairs. Based on the evidence and testimony presented, the Board concludes the deduction for steam cleaning the carpet was not proper; the deduction did not reflect the actual cost to steam clean the carpet, but was a flat fee. With respect to the deduction to remove 2 chairs from the unit, the Board concludes the deduction was proper. Mac Stevens told Marcie Gallagher she would need to provide a written statement from the new tenants if they wanted the chairs to remain in the apartment; she did not do so. The \$30 deduction was the actual cost to dispose of the chairs.

Order

Accordingly, it is hereby ORDERED:

13. Petitioners Marcie Gallagher and Graham Turk are entitled to recover from respondent Sisters and Brothers Investment Group the following amounts:

a) \$100 of the principal amount of the security deposit improperly withheld after June 15, 2021; and

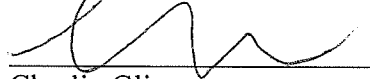
b) Additional interest of \$0.0007 per day from June 16, 2021 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this ^{4th} 29 day of September, 2021.

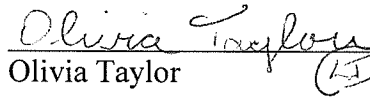
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara

Josh O'Hara



Charlie Gliserman



Olivia Taylor

/s/ Evan Litwin

Evan Litwin