

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

**In re: Request for Hearing of GIANNA )  
GALLUCCI, JACOB WRIGHT and )  
DANIEL SCHLOEMER Regarding )  
Withholding of Security Deposit by ) Security Deposit Appeal  
RICHARD and EVAN POWLOWSKY )  
For Rental Unit at 66 Bradley St, 2<sup>nd</sup> Fl )**

**DECISION AND ORDER**

The above-named hearing came before the Housing Board of Review on August 9, 2021. Board Chair Josh O’Hara presided. Board Members Betsy McGavisk, Evan Litwin and Olivia Taylor were also present. Petitioners Gianna Gallucci, Jacob Wright and Daniel Schlemmer were present and testified. Respondent Evan Powlowsky was also present 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. Respondents Evan and Richard Powlowsky are the owners of a rental unit, 66 Bradley Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Gianna Gallucci, Jacob Wright and Daniel Schloemer moved into the rental unit on June 1, 2019 under the terms of a written lease. Monthly rent was \$1800.00.
3. Petitioners paid a security deposit of \$1800.00 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 25, 2021. However, upon vacating the unit, petitioners, with respondents’ permission, stored some of their belongings in the basement. Petitioners testified they removed all their possessions from the basement on June 1. Respondent

testified that at the time of the hearing there were still items (sporting equipment, amps and an air conditioning unit) in the basement. Petitioners maintained the items in the basement were not theirs while respondent testified he told petitioners they were responsible for items left there.

5. Respondents returned \$1400 of the deposit on June 23, 2021; respondents sent, by Venmo, \$466.67 to each petitioner. Respondents also sent a list of deductions which included painting, cleaning and trash removal. While the damages totaled \$533.44, respondents indicated they would settle on a \$400 deduction. Respondents also filled out a “Notice of Withholding Security Deposit”, but it was never sent to petitioners. Respondents did not send petitioners notice of their right to request a hearing before this Board.

6. Interest was not credited to the deposit.

7. Petitioners argued that the deposit was willfully withheld on the basis that the return of part of the deposit was not timely and that respondents were withholding the deposit until their belongings were out of the apartment. Petitioners believe Evan Powlowsky’s last text message to them evidenced the willful nature of the withholding in that he said he was waiting for them to get their belongings out of the basement and then the \$1400 would be returned. Petitioners also believed respondents knew their responsibility to return the money within 14 days but disregarded it. Respondent testified they were just trying to cover the cost of the repairs they needed to make. In a text to petitioners, Evan Powlowsky wrote, “Please understand we are being fair with the SD and not trying to take more than what was spent on materials/labor.”

8. On June 21, 2021, Evan Powlowsky responded to petitioner’s text about the return of their deposit and told them there were some damages so that \$400 was being withheld. He also told petitioners that \$1400 of the deposit would be returned in the next day or so. Respondent’s text also indicated that he had been in contact with Jacob Wright about withholding part of the

deposit. Evan Powlowsky testified that this case was the first time he had withheld a deposit and he was still learning about the process to do that; Mr. Powlowsky also testified the relationship between himself and petitioners was very good during the tenancy up until the point they moved out of the apartment.

### **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).

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 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. Respondents did not provide a written statement to petitioners within 14 days, did not provide notice of petitioner’s right to request a hearing and did not return deposit monies within 14 days. Therefore, the Board concludes respondents forfeited the right to withhold any part of the deposit.

13. 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). Petitioners have also moved for double damages, alleging respondents’ failure to return their 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 and respondent Evan Powlowsky were in touch via text about the return of the security deposit. The evidence supports respondents’ position that they were only trying to cover their costs to make repairs in the unit. While the tone of Evan Powlowsky’s last text message to petitioners was somewhat argumentative, there was also a tone of frustration with respondent pleading for petitioners to get their belongings out of the basement. Based on the evidence and testimony, the Board concludes that the withholding of the deposit was not willful.

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

14. 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:

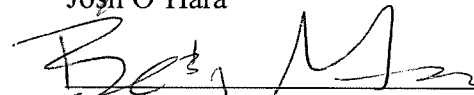
15. Petitioners Gianna Gallucci, Jacob Wright and Daniel Schloemer are entitled to recover from respondents Richard and Evan Powlowsky the following amounts:

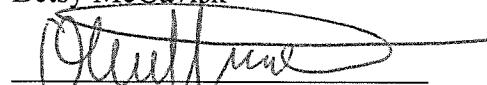
- a) \$400 of the principal amount of the security deposit improperly withheld after June 8, 2021;
- b) Interest in the amount of \$9.27 on the entire deposit for the period June 1, 2019 to June 23, 2021; and
- c) Additional interest of \$0.003 per day from June 24, 2021 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 25<sup>th</sup> day of August, 2021.

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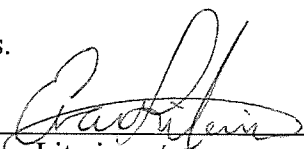
  
Josh O'Hara

  
Betsy McGavisk

  
Olivia Taylor

I respectfully dissent from the majority decision with respect to their ruling on the willful withholding of the deposit. In this case, 3 tenants submitted evidence of a series of text messages with landlord Evan Powlowsky. Respondent did not contest the content of these messages. In one message, after the tenant quotes from the security deposit ordinance, Mr. Powlowsky writes, “We understand the regulation, we also have expenses due to how the apartment was left.” Mr. Powlowsky sent photos of some items in the basement alleged to have been left by the tenants; however, it was brought to the attention of the Board that this was a shared space between multiple units which had multiple tenants, and the tenants provided testimony that those items were not theirs. Mr. Powlowsky offered oral testimony that described a variety of furniture that had been left but no explanation was offered as to why that furniture was not in the photos, and he offered no evidence that would refute the tenants’ claim. With the photos, Mr. Powlowsky wrote a reply and specifically said, “...So now I guess it is convenient for you and are demanding the security deposit back. Pls get the stuff out of basement and you will get the 1400 back. We worked with you, pls work with us.”

Evan Powlowsky’s text messages state that he understood the law, and he insinuates that he will not return the security deposit until the tenants do what he asks. The above-quoted text conversation occurred on June 21, 2021 – 3 weeks after the tenants fully vacated the property. Had the tenants not contacted respondents first, it is unclear to me whether or not the landlords would have even provided (albeit late) an itemized list of deductions, which could have included the cost to remove abandoned items from the unit, to the tenants with their due portion of the deposit. Based on those facts, I find that the landlords willfully withheld the tenants’ security deposit and, in my view, are entitled to double damages.

  
Evan Litwin