



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 11/12/21

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

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

cc: Silas Goldman
Judith McLaurin for C. McLaurin & Son

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

**In re: Request for Hearing of SILAS GOLDMAN,)
NATHANIEL ELLIOT and BENJAMIN)
JIRON Regarding Withholding of Security) Security Deposit Appeal
Deposit by C. McLaurin & Son, LLC)
for Rental Unit at 60A Archibald Street)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on October 4, 2021. Board Chair Josh O'Hara presided. Board Members Betsy McGavisk, Charlie Gliserman, Evan Litwin and Olivia Taylor were also present. Petitioner Silas Goldman was present and testified. Respondent C. McLaurin & Son, LLC, although notified of the hearing and the opportunity to be heard, was not present.

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 C. McLaurin & Son, LLC is the owner of a rental unit, 60A Archibald Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Silas Goldman, Benjamin Jiron and Nathaniel Elliot moved into the rental unit with a written lease which expired on June 30, 2021.
3. Petitioners paid a security deposit of \$1,860.00, plus an additional deposit of \$200.00 for their cat, 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 July 1, 2021.

5. On July 14, 2021, Judith McLaurin, on behalf of respondent, emailed to petitioners a “Security Deposit Transmittal” informing them that the entire deposit was being withheld for damages. The statement informed petitioners of their right to dispute the withholding of the deposit to this Board. Interest in the amount of \$0.25 was credited to the deposit.

6. Petitioners disputed the deductions for smoking in a non-smoking apartment (\$1200), broken windows and frame on the porch (\$160), broken lock on the back door (\$37) and missing screen and frame from a bedroom window (\$60). Other deductions on the itemized list were not contested.

7. Petitioners denied that the contested damages were attributable to them. With respect to smoking in the apartment, petitioners denied doing so and said any smoke coming into the apartment was from people smoking outside on the street. With respect to the broken window on the porch, petitioners claim the upstairs’ neighbors caused the damage. With respect to the broken lock on the backdoor, petitioners stated someone tried to break into the apartment with a crowbar and caused the damage. Respondent’s handyman tried to repair the damage but wasn’t able to; nonetheless, respondent charged them for the failed repair attempt. With respect to the missing screen from the bedroom window, petitioners testified there was no screen in the window when they moved into the apartment. The Board finds the petitioners’ account to be true in the absence of any countervailing evidence from respondent.

Conclusions of Law

8. 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.

9. 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.

10. 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). Proper notice was provided.

11. State law and city ordinance allow a landlord to withhold all or part of a security deposit for damages beyond normal wear and tear which are attributable to the tenant. See, Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(b). Petitioners disputed the deductions for smoking in the apartment, for broken window and frame on the porch, for the broken lock on the back door and for the missing screen and frame from a bedroom window on the basis that the damage was not attributable to them. The Board has found petitioners' account

to be true. Accordingly, the Board concludes that the deductions contested by petitioners were not proper as the damage was not attributable to them.

Order

Accordingly, it is hereby ORDERED:

12. Petitioners Silas Goldman, Benjamin Jiron and Nathaniel Elliot are entitled to recover from respondent C. McLaurin & Son, LLC the following amounts:

a) \$1,457.25 of the principal amount of the security deposit plus interest improperly withheld after July 15, 2021; and

b) Additional interest of \$0.01 per day from July 16, 2021 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 12th day of November, 2021.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Charlie Gliserman
Charlie Gliserman

/s/ Evan Litwin
Evan Litwin

/s/ Olivia Taylor
Olivia Taylor