



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 10/19/22

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk  
Betsy McGavisk  
Board Chair

cc: Hannah Gould (for all tenants)  
Diamond Apartments LLC

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

**In re: Request for Hearing of HANNAH GOULD, )  
EMMA SOPCHAK and EMILY )  
SAUNDERS Regarding Withholding of ) Security Deposit Appeal  
Security Deposit by DIAMOND )  
APARTMENTS, LLC for Rental Unit at )  
452 South Union St., Unit 2 )**

**DECISION AND ORDER**

The above-named hearing came before the Housing Board of Review on September 6, 2022; the meeting was held remotely via Zoom. For purposes of expedition, Board Members Olivia Taylor and Josh Wronski were appointed Hearing Officers to hear and decide the above – referenced matter. Petitioners Hannah Gould, Emma Sopchak and Emily Saunders were present and testified. Respondent Diamond Apartments, LLC was represented by Mike and Elmira Shea both of whom testified. Also appearing was Benjamin Gould, attorney for petitioners.

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 Diamond Apartments, LLC, is the owner of a rental unit, 452 South Union Street, Unit 2, in the City of Burlington which is the subject of these proceedings. Mike and Elmira Shea manage the property.
2. Petitioners Hannah Gould and Emily Saunders moved into the rental unit on June 1, 2020 under the terms of a written lease; petitioner Emma Sopchak moved into the rental unit on June 1, 2021 when the lease was renewed. Monthly rent was \$2475.00.
3. Petitioners paid a security deposit of \$2425.00 to respondent; Hannah Gould and Emily Saunders each paid a deposit of \$800.00. However, Emma Sopchak paid a deposit of

\$825 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 26, 2022.

5. On June 6, 2022, respondent sent each petitioner a written statement in accordance with ordinance requirements. Said statement itemized deductions of \$169.00 from each of petitioner's deposits. Interest in the amount of \$0.56 was credited to each deposit. Respondent returned \$631.56 to each petitioner. Mike and Elmira Shea acknowledged that Emma Sopchak should have received an additional \$25.00 since she paid a deposit of \$825.00, not \$800.00.

6. Both parties testified with respect to cleaning which appeared as a deduction of \$489.00 (\$163.00 each) on the itemized statement. After petitioners moved out, Elmira Shea inspected the apartment and found the cleanliness of it was not satisfactory. Consequently, Ms. Shea hired D&R Cleaning Services to clean the apartment. The invoice for cleaning was \$490.00: 15 hours of cleaning at a rate of \$30/hour plus \$40 to clean the oven. Prior to moving out petitioners received information from respondent related to their expectations of tenants who are moving out. These expectations included information about cleaning, trash and repairs. Both the lease and informational sheet include leaving the premises thoroughly cleaned and in the same or better condition as at the beginning of the tenancy. Petitioners testified they thoroughly cleaned the apartment before moving out and tried to follow the cleaning expectations laid out in the move-out list. Petitioners also testified they cleaned the stove top and oven approximately 2 weeks before they moved out. Petitioners argued that the cleaning done by D&R Services was part of normal wear and tear. Photos submitted into evidence indicate the apartment was reasonably clean after petitioners out although there were some dirty

baseboards and cobwebs around some windows. However, the oven and stove were very dirty and the refrigerator needed to be wiped out.

7. Both parties testified with respect to trash removal which appeared as a deduction of \$18.00 (\$6.00 each) on the itemized statement. After petitioners moved out of the unit, respondents were charged an additional \$40 by Gauthier Trucking for extra trash left at the property. Respondent divided the cost between 7 tenants who moved out at the end of May. Petitioners acknowledged leaving trash, putting it at the garbage receptacles as usual. The cost of “normal refuse removal for ordinary household needs” was paid by respondent. However, the lease also provides that any extra trash removal costs will be the tenant’s responsibility. Further, the move out checklist states that all the tenants in the building will equally share in the cost of excess trash removal.

8. Petitioners argued that the deposit was willfully withheld and requested that respondent be ordered to pay double damages. Petitioners argued that respondent is a professional landlord who is aware of their responsibilities with respect to the withholding of a security deposit. Nonetheless, petitioners argued that respondent held them to a higher standard than what is allowed under city ordinance. Respondent argued that the house was not clean when petitioners moved out even though they provided petitioners with a move-out checklist of expectations. As the rental unit was not clean, respondent hired cleaners.

### **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). Proper notice was provided.

12. Based on the evidence and testimony, the Hearing Officers conclude that the stovetop, oven and refrigerator were dirty beyond what would be expected from normal wear and tear. The Hearing Officers conclude a reasonable deduction for cleaning the stovetop and oven was \$40 and a reasonable deduction to clean the refrigerator was \$15.00. However, other cleaning done in the apartment was part of normal wear and tear.

13. Based on the evidence and testimony, the Hearing Officers conclude the deduction for extra trash removal was proper and the deduction was reasonable. The lease provides that the

cost to remove any excess garbage at move-out will be charged to the tenants. Petitioners and other tenants in the building left excess trash after moving out. City ordinance provides that a security deposit can be withheld for nonpayment of charges owed directly to the landlord. Minimum Housing Code Sec. 18-120(a)(1). Consequently, the Hearing officers conclude the deduction is allowed under city ordinance.

14. Petitioner argued that the deposit was willfully withheld. 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). Petitioner has also moved for double damages, alleging respondents' failure to return the 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). The Hearing Officers conclude the deposit was not willfully withheld. Respondent returned \$1894.68 of the deposit with a statement to petitioners in a timely manner. The parties disagreed about the level of cleaning that needed to be done at the move-out, but those differences do not amount to the willful withholding of the deposit. And, the additional \$25 that was not returned to Emma Sopchak was an honest error.

### **Order**

Accordingly, it is hereby ORDERED:

15. Petitioners are entitled to recover from respondent Diamond Apartments, LLC the following amounts:

a) Petitioner Hannah Gould is entitled to recover \$145 plus additional interest of \$0.001 per day from June 7, 2022 until such date as the amount improperly withheld is returned to her; and

b) Petitioner Emily Saunders is entitled to recover \$145.00 plus additional interest of \$0.001 per day from June 7, 2022 until such date as the amount improperly withheld is returned to her; and

c) Petitioner Emma Sopchak is entitled to recover \$170.00 plus additional interest of \$0.001 per day from June 7, 2022 until such date as the amount improperly withheld is returned to her.

DATED at Burlington, Vermont this 19<sup>th</sup> day of October, 2022.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Olivia Taylor  
Olivia Taylor  
Hearing Officer

/s/ Josh Wronski  
Josh Wronski  
Hearing Officer