



HOUSING BOARD OF REVIEW

City of Burlington

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(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 5/22/2020

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O’Hara
Josh O’Hara
Board Chair

cc: Alyssa Grant & Jordan Atwood
Rick Handy for Handy Court LLC
Champlain Valley Office of Economic Opportunity (“CVOEO”)

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

**In re: Request for Hearing of ALYSSA GRANT)
and JORDAN ATWOOD Regarding)
Withholding of Security Deposit by) Security Deposit Appeal
HANDY COURT LLC for Rental Unit at)
9 Handy Court)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on May 4, 2020; the meeting was held electronically via Zoom. Board Chair Josh O’Hara presided. Board Members Patrick Kearney, Patrick Murphy, Olivia Pena and Betsy McGavisk were also present. Petitioners Alyssa Grant and Jordan Atwood were present and testified. Respondent Handy Court LLC was represented at the hearing by Rick Handy 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 Handy Court LLC is the owner of a rental unit, 9 Handy Court, in the City of Burlington which is the subject of these proceedings. Rick Handy manages the property.
2. Petitioners Alyssa Grant and Jordan Atwood moved into the rental unit on June 1, 2019.
3. Respondent received a security deposit of \$1900.00. Rick Handy testified that Champlain Valley Office of Economic Opportunity (CVOEO) paid the deposit. Petitioners disputed the amount of the deposit paid to respondent and who paid it.

Petitioners testified the total amount of the deposit was \$2100.00; in addition, they testified that they paid half of the deposit and CVOEO paid half of it. The Board finds respondent's testimony regarding the amount of the deposit and who paid it to be more credible.

4. Petitioners vacated the apartment on February 1, 2020.

5. On February 12, 2020, Rick Handy sent a text message to petitioner Alyssa Grant with an itemized list of deductions from the deposit. Mr. Handy withheld the entire deposit for damages and unpaid rent. Mr. Handy also mailed the statement to petitioners through a family member. Petitioners denied having received an itemized statement of deductions.

6. Respondent's statement of deductions did not include notice to petitioners of their opportunity to request a hearing before this Board to dispute the withholding of the deposit. In addition, interest was not credited to the deposit.

Conclusions of Law

7. 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.

8. 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.

9. 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).

10. 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.¹ *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. In this case, respondent failed to comply with the notice requirements by failing to include petitioner's appeal rights in the statement. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

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

11. 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. Minimum Housing Code Sec. 18-120(c). The Board applies the interest rate currently found in most bank passbook savings accounts – 0.25% simple annual interest. In this case, interest was not credited to the deposit. Accordingly, the Board will order that interest be returned.

Order

Accordingly, it is hereby ORDERED:

12. Respondent Handy Court LLC shall return to CVOEO (the entity that paid the security deposit) the following amounts:

a) \$1900.00 of the principal amount of the security deposit improperly withheld after February 15, 2020;

b) Interest in the amount of \$2.60 on the entire deposit for the period June 1, 2019 to February 15, 2020; and

c) Additional interest of \$0.01 per day from February 16, 2020 until such date as the amount improperly withheld is returned.

DATED at Burlington, Vermont this 22 day of May, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Patrick Kearney
Patrick Kearney

/s/ Olivia Pena
Olivia Pena

/s/ Patrick Murphy
Patrick Murphy

/s/ Betsy McGavisk
Betsy McGavisk