

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

In re: Request for Hearing of ALISON HALL)
Regarding Withholding of Security) Security Deposit Appeal
Deposit by JUNE LECLAIR for Rental)
Unit at 406 South Union St, Apt. 1)

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on November 2, 2020; the hearing was held virtually via Zoom. Board Chair Josh O’Hara presided. Board Members Patrick Murphy, Olivia Pena, Betsy McGavisk and Charlie Gliserman were also present. Petitioner Alison Hall was present and testified. Respondent June LeClair was also present and testified. Also appearing and testifying was Sherry LeClair.

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 June LeClair is the owner of a rental unit, 406 South Union Street, Apt. 1, in the City of Burlington which is the subject of these proceedings. Sherry LeClair helps manage the property.
2. Petitioner Alison Hall moved into the rental unit with a written lease which ran from July 1, 2019 to June 28, 2020. Monthly rent was \$1100.00.
3. Petitioner paid a security deposit of \$550.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on August 12, 2020.
5. On August 13, 2020, Sherry LeClair texted petitioner and informed her that the apartment needed to be cleaned. Ms. LeClair told petitioner the charge would be deducted from

her security deposit. She estimated the charge would be about \$150.00.

6. On August 20, 2020, respondent sent a check in the amount of \$385.00 to petitioner at the address provided by her¹, withholding \$165.00 for cleaning. Respondent included a copy of the invoice for cleaning with the check. Respondent did not send an itemized statement of deductions with the check; in addition, respondent did not provide notice to petitioner of the right to appeal the withholding of the deposit to this Board. Petitioner did not receive the check sent to her.

7. On August 27, 2020, petitioner texted Sherry LeClair inquiring about her deposit. Ms. LeClair responded that respondent had sent the check along with the cleaning invoice of \$165.00 to her. Ms. LeClair indicated she thought the letter should be in petitioner's mail that day or the next.

8. On August 28, 2020, petitioner sent respondent a letter requesting the full return of her deposit as respondent forfeited the right to withhold it by her failure to return the deposit within 14 days and for failing to send an itemized statement of deductions. Petitioner indicated if the deposit was not returned in full by September 4, she would file a request for hearing before this Board. Petitioner filed her request on September 1, 2020.

9. Petitioner argued that the failure to return the deposit was willful. The basis of her argument is that the check was sent to the incorrect address and that the deposit wasn't returned even after petitioner informed her that she forfeited the deposit under state law. Respondent and Sherry LeClair denied that the deposit was willfully withheld. Sherry LeClair and respondent testified that a check was sent and they don't know what happened to it. (Petitioner confirmed that she did not give respondent her complete mailing address.) Sherry LeClair also testified that

¹ When petitioner provided her mailing address to respondent she did not include her apartment number.

she thought she provided petitioner with a good understanding of what was happening with the deposit – how much was being withheld and why.

Conclusions of Law

10. 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.

11. 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.

12. 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).

13. 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.² 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 send an itemized list of deductions from the deposit, by failing to include petitioner's appeal rights in a statement and by failing to return the deposit within 14 days of the vacate date. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

14. Petitioner argued that the deposit was willfully withheld. Sec. 18-120 of the Minimum Housing Code provides that if the failure to return a deposit with an itemized statement is willful, the landlord is liable for double the amount wrongfully withheld. Petitioner argued that respondent's failure to return the deposit after being informed that she hadn't received it, as well as sending the deposit to the incorrect address, demonstrated the willful withholding of the deposit. The Board concludes there is no evidence to support that the deposit was willfully withheld: respondent sent a check to the address provided by petitioner. Although the check was never received, they don't know what happened to it. In addition, Sherry LeClair was responsive to petitioner's text messages and kept her updated about the deposit.

15. Petitioner is 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

²An amendment to Sec. 18-120(c) removing the "certified mail" requirement took effect on January 7, 2015.

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:

16. Petitioner Alison Hall is entitled to recover from respondent June LeClair the following amounts:

a) \$550.00 of the principal amount of the deposit improperly withheld after August 26, 2020;

b) Interest in the amount of \$1.46 on the entire deposit for the period August 2, 2019 to August 26, 2020; and

c) Additional interest of \$0.004 per day from August 27, 2020 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 10th day of December, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O’Hara
Josh O’Hara

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Patrick Murphy
Patrick Murphy

/s/ Olivia Pena
Olivia Pena

/s/ Charlie Gliserman
Charlie Gliserman