



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 10/10/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Tim Heffernan
Stanley & Nancy Mikrut

**STATE OF VERMONT
CHITTENDEN COUNTY, SS.**

**In re: Request for Hearing of TIM HEFFERNAN,)
ARTHUR CONOVER and RYAN DARLING) CITY OF BURLINGTON
Regarding Withholding of Security) HOUSING BOARD OF REVIEW
Deposit by STANLEY & NANCY MIKRUT)
for Rental Unit at 42 Latham Ct, Apt. 1)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on September 30, 2019. Board Chair Josh O'Hara presided. Board Members Patrick Kearney, Patrick Murphy, Olivia Pena and Betsy McGavisk were also present. Petitioners Tim Heffernan, Arthur Conover and Ryan Darling were present and testified. Respondents Stanley and Nancy Mikrut were represented at the hearing by Greg Monteith 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. Respondents Stanley and Nancy Mikrut are the owners of a rental unit, 42 Latham Court, in the City of Burlington which is the subject of these proceedings. Greg Monteith manages the property for respondents.
2. Petitioners Tim Heffernan, Ryan Darling and Arthur Conover and another person who is not a party to this proceeding, Justice Lee, moved into the rental unit with a written lease which ran from June 1, 2018 to May 31, 2019. Monthly rent was \$2695.00.
3. Petitioners paid a security deposit of \$2600.00 to respondent¹. 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 31, 2019.

¹ The security deposit was rolled over from the previous year when petitioners Tim Heffernan and Ryan Darling first moved into the apartment.

5. On June 13, 2019 respondents sent petitioners a letter notifying them that their entire deposit was being withheld for damages and unpaid rent. Interest in the amount of \$54.00 was credited to the deposit. The letter did not inform petitioners of their right to request a hearing before this Board. Petitioners disputed the deductions, as well as the sufficiency of the notice provided to them.

6. Petitioners also alleged that respondents willfully withheld the deposit and requested the Board to order double damages. The basis of their request is that they believed they would not be held liable for Justice Lee's unpaid rent even though they were jointly and severally liable under the lease. Petitioners testified that they were assured by respondents that they would pursue Justice Lee or his co-signor for unpaid rent owed by him. Nonetheless, their deposit was withheld, in part, for his unpaid rent. Greg Monteith testified that petitioners were good tenants who unfortunately had a bad roommate leaving respondents with almost \$6,000.00 in unpaid rent.

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.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, respondents failed to comply with the notice requirements by failing to include petitioners' appeal rights in the statement. Therefore, the Board concludes respondents forfeited the right to withhold any part of the deposit.

11. Petitioners argued that respondents willfully withheld the deposit. If the failure to return a security deposit is willful, the landlord shall be liable for double the amount wrongfully withheld. See, Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). Petitioners argued that respondents' decision to withhold their deposit for a roommate's unpaid rent, despite assurances they believed they received from respondents not to, evidenced willful withholding of the deposit. The Board concludes respondents' withholding of the deposit was not willful. There is no dispute that there was unpaid rent owed to respondents or that the tenants were jointly and severally liable under the lease. City ordinance and state law allow a security deposit to be withheld for unpaid rent. Respondents' decision to withhold the deposit for unpaid rent was allowable under city ordinance and state law; if they changed their minds about doing so, it does not demonstrate a willfully unlawful withholding.

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

ORDER

Accordingly, it is hereby ORDERED:

12. Petitioners Tim Heffernan, Arthur Conover and Ryan Darling are entitled to recover from respondents Stanley and Nancy Mikrut the following amounts:

a) \$2654.00 of the principal amount of the deposit (including the accrued interest) improperly withheld after June 14, 2019; and

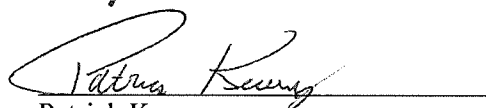
b) Additional interest of \$0.02 per day from June 15, 2019 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 10th day of October, 2019.

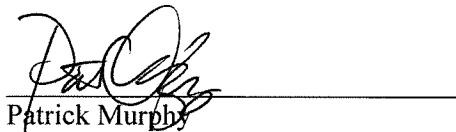
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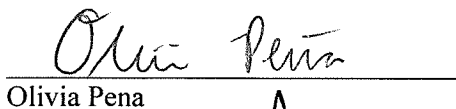
Josh O'Hara



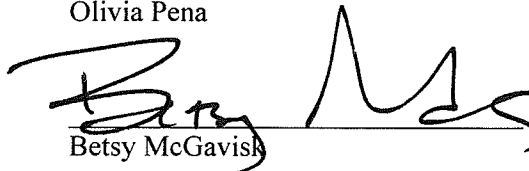
Patrick Kearney



Patrick Murphy



Olivia Pena



Betsy McGavisk