



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 2/19/20

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

Josh O'Hara  
Board Chair

cc: Jacklyn Hickerson  
Champlain Housing Trust

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

**In re: Request for Hearing of JACKLYN            )  
      HICKERSON Regarding Withholding of    ) Security Deposit Appeal  
      Security Deposit by SALMON RUN        )  
      HOUSING LP/CHAMPLAIN HOUSING        )  
      TRUST for Rental Unit at 220 Riverside   )  
      Avenue, #G12                                )**

**DECISION AND ORDER**

The above-named hearing came before the Housing Board of Review on January 21, 2020. Board Chair Josh O’Hara presided. Board Members Patrick Kearney, Patrick Murphy and Olivia Pena were also present. Petitioner Jacklyn Hickerson was present and testified. Respondent Salmon Run Housing LP/Champlain Housing Trust was represented at the hearing by Dan Mendl and Sara Maddocks 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 Salmon Run Housing LP/Champlain Housing Trust is the owner of a rental unit, 220 Riverside Avenue,#G12, in the City of Burlington which is the subject of these proceedings. Dan Mendl and Sara Maddocks from Champlain Housing Trust (“CHT”) manage the property.

2. Petitioner Jacklyn Hickerson moved into the rental unit on August 14, 1996. Petitioner paid a deposit of \$515.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.

3. The vacate date was in dispute. Petitioner closed on her new home on November 9, 2019 and moved most of her belongings out of the apartment on that date. It was her

understanding that she had an agreement with another property manager at CHT, Jusinta, that she would return the keys to the apartment when she finished moving all her belongings out and cleaned. However, when petitioner returned to the apartment on November 15, her keys did not work on the apartment door and she left. Petitioner called CHT and arranged to meet a maintenance person at the apartment on November 17 so that she could get the rest of her belongings; petitioner was only able to remove the rest of her belongings and was unable to clean. Dan Mendl had the locks to the apartment changed on November 14, 2019 because he believed petitioner had moved out of the apartment based on an email she sent to him on September 29. The Board finds the vacate date to be November 14, 2019 – the date on which respondent took possession of the apartment.

4. On November 26, 2019, respondent sent petitioner a statement indicating prorated rent was being withheld from the deposit for the period November 1, 2019 to November 18, 2019. Respondent returned \$29.78 of the deposit to petitioner. Petitioner disputed the prorated rent being charged by CHT arguing that she should not have been charged for rent for the days after the locks were changed. Respondent agreed and revised the statement and returned an additional \$121.00 to petitioner on December 27, 2019. Both statements informed petitioner of her right to request a hearing before this Board to dispute the withholding of her deposit. Petitioner argued that she did not receive proper notice.

5. Interest in the amount of \$239.78 was credited to the deposit. Petitioner questioned the amount of interest credited to her deposit. Respondent calculated simple interest using an online calculator with a 2% annual interest rate. Petitioner did not provide her own calculations.

6. Petitioner also argued that the deposit was willfully withheld because she had an agreement with Jusinta at CHT about when she would move out of the apartment, but Dan Mendl had the locks changed on November 14 before she finished moving out.

### **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). 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).

10. Petitioner argued that she did not receive proper notice. The Board found the vacate date to be November 14, 2019. Respondent sent an itemized statement to petitioner on November 26, 2019 and returned \$29.78 of the deposit on that date. The statement informed petitioner of her appeal rights. The statement was sent within 14 days of the vacate date. When petitioner disputed the amount withheld, respondent revised the statement and sent it to her on December 27, 2019 with additional money. The fact that respondent agreed to revise the amount withheld does not mean the statement sent on November 26 was not proper. The Board concludes proper notice was given.

11. Petitioner also argued that the withholding of the deposit was willful because she had an agreement with Jusinta at CHT about the move out date, but then Dan Mendl had the locks changed. Dan Mendl believed petitioner had moved out so it was reasonable for him to have changed the locks when the keys were not returned. The Board concludes that respondent's withholding was not willful.

12. Petitioner also questioned the amount of interest credited to her deposit as there was no indication on the itemized statement as to how the interest was calculated. Section 18-120(a) of the Minimum 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. Sec. 18-120(a). The Board applies the interest rate currently found in most bank passbook savings accounts – 0.25% simple annual interest. Respondent's calculation of interest was based on a simple interest calculator found online and used an interest rate of 2% per year. The Board concludes interest was properly credited.


#### **Order**


Accordingly, it is hereby ORDERED:

13. Petitioner Jacklyn Hickerson's request for relief is DENIED.

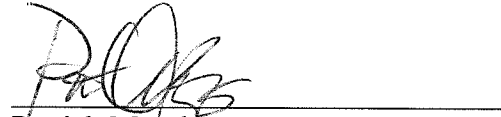
DATED at Burlington, Vermont this 19<sup>th</sup> day of February,  
2020.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
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Josh O'Hara

  
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Patrick G. Kearney

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Olivia Pena

  
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Patrick Murphy