



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 10/29/18

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
\_\_\_\_\_  
Ben Traverse  
Board Chair

cc: Fernando Jimenez  
W.L. Shriner

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

**In re: Request for Hearing of FERNANDO )  
JIMENEZ Regarding Withholding of ) CITY OF BURLINGTON  
Security Deposit by W.L. SHRINER for ) HOUSING BOARD OF REVIEW  
Rental Unit at 37 N. Prospect St, #1 )**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

The above-named hearing came before the Housing Board of Review on October 1, 2018. Board Chair Ben Traverse presided. Board Members Josh O’Hara, Patrick Kearney, Steven Goodkind and Patrick Murphy were also present. Petitioner Fernando Jimenez was present and testified. Respondent W.L. Shriner was also present and testified. Also appearing and testifying was Richard Brock.

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 W.L. Shriner is the owner of a rental unit, 37 North Prospect St, #1, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Fernando Jimenez moved into the rental unit under the terms of a written lease which ran from July 1, 2017 to June 30, 2018; petitioner had 2 roommates.
3. Petitioner and his roommates paid a security deposit of \$2215.00 to respondent. Petitioner and his roommates were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. The parties disputed the vacate date. Petitioner argued that the vacate date was June 30, 2018, even though he left his belongings there and still had a key to the apartment. (There is no dispute that petitioner’s roommates were out of the apartment on June 30.) Petitioner made an arrangement with the new tenant, Richard Brock, to leave his belongings in the apartment because he was unable to move all of them out by June 30. Respondent argued that the vacate date was July 6, 2018, the date all petitioner’s belongings were out of the apartment and his keys were returned; until that date, respondent argued, petitioner still had possession of the apartment. Although respondent argued petitioner had possession of

the apartment, he also allowed the new tenant to take possession of it. Richard Brock's lease started on July 1 at which time he started moving into the apartment and he began paying rent. At that time, it appeared to Mr. Brock that petitioner was still living in the apartment because the lights were on and petitioner's belongings were still in one of the bedrooms. The Board finds the vacate date was July 6, 2018, the date on which petitioner's belongings were out of the apartment and the keys were returned to respondent.

5. On July 19, 2018, respondent sent a written statement to Thomas Hojnacki (one of petitioner's roommates) in conformance with ordinance requirements. That statement itemized deductions from the deposit totaling \$852.90. Interest in the amount of \$44.30 was credited to the deposit. Respondent returned \$1406.40 of the deposit to Thomas Hojnacki.

6. Petitioner disputed the timeliness of respondent's statement, as well as the deduction of \$422.90 for July 2018 rent. Petitioner argued that he was not living in the apartment so he should not have been charged for rent; he argued that he had a separate and distinct agreement with the new tenant to keep his belongings in the apartment that had nothing to do with respondent. He also testified that had he known he was going to be charged for rent while his belongings were in the apartment, he would have made other arrangements. Respondent withheld 6 days of rent for the period he claims petitioner still had possession of the apartment.

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

10. Based on the evidence and testimony, the Board concludes the deduction of \$422.90 for unpaid rent (6 days in July 2018) was reasonable. If the petitioner had vacated the apartment on June 30, withholding his security deposit for unpaid rent would have been unwarranted, even if the petitioner had an agreement with the landlord to stay through the first week of July, as the respondent received rent from Mr. Brock during this same time period and cannot double dip. The outcome of this decision relies on the fact that the petitioner remained in actual possession of the rental unit and, therefore, owed rent.

11. It is not within the Board's authority to order the respondent to return rent money to Mr. Brock. In the Board's opinion, however, it was inappropriate for the respondent to turn possession of the unit over to Mr. Brock, and to begin collecting rent from him, when he knew the petitioner remained in possession of the unit. The Board acknowledges that at the hearing, the respondent indicated it was his intent to return rent to Mr. Brock for the overlapping period.

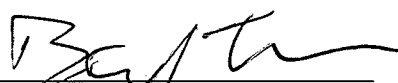
**ORDER**

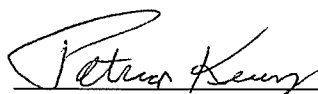
Accordingly, it is hereby ORDERED:

12. Petitioner Fernando Jimenez's request for relief is DENIED.

Dated at Burlington, Vermont this 19<sup>th</sup> day of October, 2018.

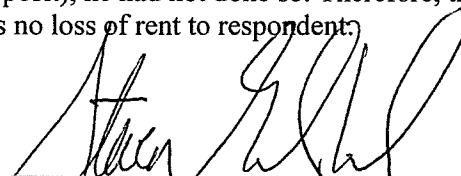
CITY OF BURLINGTON  
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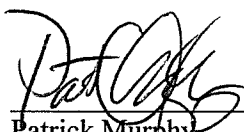
  
\_\_\_\_\_  
Ben Traverse

  
Patrick Kearney

  
Josh O'Hara

We respectfully dissent from the majority decision in this matter. The deduction of \$422.50 from petitioner's deposit for unpaid rent for 6 days of rent in July 2018 should not be allowed. Respondent collected rent for the entire month of July 2018 from the new tenant, Richard Brock. He then withheld money for unpaid rent for the same time period from petitioner. Thus, there was no loss of rent to respondent - on the contrary, he collected rent twice. Had respondent wanted to hold petitioner liable for rent for that time period, he should not have collected rent from the new tenant. Although respondent indicated his plan to refund money to the new tenant for 6 days of rent in July, as of the date of the hearing (almost 3 months after the withholding of the deposit), he had not done so. Therefore, the deduction of \$422.50 should not be allowed as there was no loss of rent to respondent.

  
Steven Goodkind

  
Patrick Murphy